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Religious Reasons as a Basis for Political Justification?

Master's thesis

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Preface

If you are reading, this then that means I was able to keep my promise given two years ago at my Bachelor's thesis defense to be back in two years. I would like to use this Preface to give a short background story and also give proper recognition to all the people who have had a role to play in the completion of this thesis.

When I was writing my Bachelor's thesis about democratic education, I came across a possible disagreement between parents' religious beliefs and the educational demands of a democratic state. There seemed to be some sort of fundamental conflict between the two. As I started to read the relevant literature, I discovered that there is a very concrete formulation of this problem—in terms of providing justification—and also a traditional solution to it—presented by John Rawls. While I felt sympathetic to the solution I also saw the objections and problems, which led me to develop an argument which defends a position similar to the Rawlsian solution.

In general I would like to thank my teachers and fellow students who have guided and accompanied me during the last two years. I also would like to thank my co-workers and my family; while they had little direct impact on this thesis, they played a significant role in my life during the development of it.

A more special gratitude goes out to three people. First, prof. Margit Sutrop who, as the head of the Centre for Ethics, University of Tartu, has seen fit to employ with such a flexible job which has allowed me to concentrate on my studies. Second, Eva-Maria Maiste whose presence in my life, despite our many differences of opinions (philosophical and otherwise), has had a very positive effect on my motivation in my academic pursuits. Third, dr. Paul McLaughlin who has taken it upon himself to read books and articles with me in preparation for this thesis, comment on my writing and supervise my work in general, and support me in many of my academic pursuits—without him this thesis would not be.

Mats Volberg
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Introduction

Lawmaking could be understood in a very narrow and specific sense as referring to the *actual official process of how a document becomes a law*. (In the Estonian case it usually means that the majority of the parliament vote for a proposed law, then the president announces it, and finally it is promulgated in the *State Gazette*.) It can also be understood in a broader, more general sense by referring instead or in addition to the *general discussion that usually precedes any official process*. This includes but is not limited to politicians making speeches in the parliament, political activists writing columns in newspapers, but also regular citizens advocating for a law in their blogs, etc. (in all cases people must have the intention to influence the official process in some direction).

Another aspect of lawmaking, which is a further step away from the official process but still plays an important part in our daily lives, is discussions about the *application of uncontroversial laws*. For example, there are probably few people who think that freedom of speech should not be guaranteed by the constitution, but when it comes to the application of the law which guarantees freedom of speech, we often find ourselves at a puzzle: what are the things we should allow people to express under this right of freedom of speech. Even if the freedom of speech is further regulated and restricted (for example, to exclude hate-speech or inciting minors to sexual activities or to commit fraud) and those regulations are as uncontroversial as the law establishing freedom of speech, there still might be a further discussion about whether depicting a prophet in caricatures is to be allowed under freedom of speech or not allowed under the restriction of hate speech.

What is common to all these aspects of lawmaking and application is that in each case we might witness *considerable disagreement*: some members of the parliament might vote against the proposed law or the president might refuse to announce the law; within the public there might be various opinions about any specific law; and there will definitely be disagreements about what should actually be allowed under some agreed law. The possibility of disagreement means that all of the agents involved in the processes described should be *able and ready to provide reasons for their decision*: in most cases voting in the Estonian parliament is public and it is not unreasonable at all for a member of a constituency to ask her representative why she voted in this way and not in another; if the president refuses to announce a law and wants to take the parliament to court, the president is required to produce a reason for this course of action; and if someone voices their opinion in public about the necessity of a law in general or about the applicability of

some law to one or another event, we expect them to provide a reason for their opinion; otherwise it is hard for us to take them seriously. Since the reasons they provide ought to *justify* (which is not taken here to be the same as persuasion¹) their position to us, not every kind of reason will do.

In other words, some reasons, like “I just think this is right. Period”, will not be suitable in these circumstances, while others, like “Based on the other values we affirm, we should also affirm these values, since the former imply the latter”, will be more suitable in these circumstances. What I am after in this thesis is an answer to the following question: *what role can religious arguments play in providing reasons in the kinds of discussions just described?* Since justification is not taken to be synonymous with persuasion, this is not an empirical question—whether religious arguments can persuade someone to adopt a position—but a normative question—can religious arguments be used in trying to provide the justification for positions in the situations mentioned earlier?

Posed in a fairly abstract way the question might not seem very interesting; after all, without any specific context it does not seem obvious that there should be something wrong with religious arguments such that they could not be used along with other kinds of arguments. But when we place this question in the context of a liberal democracy the question becomes more interesting. What I mean is if we take into account the *non-religiosity* of some portions of modern liberal democratic societies and the *huge diversity* among those portions of the societies which are still religious, we begin to see why someone might question the use of religious arguments in the discussions I described. The second aspect of the context of liberal democracies is their *commitment to state-church separation*, which, if not implies, at least hints, that when matters of state are under consideration (which lawmaking, in the sense I am using it here, certainly is) they should be separated from matters of the church, which religion certainly is.

Since there are numerous different intellectual activities that one can engage in, I would like to offer some reasons as to why I think it makes sense to take up this question.

The first and probably the weightiest reason is that of *critical reflection upon our current political practices*. Lawmaking is not only a very important aspect of statecraft for any form of government, but usually also one that is a part of everyday practice, one that any state is constantly engaged in.² An important feature of the lawmaking process in a

¹ Although good justifications hope to persuade (see Nagel 1987: 218 for further discussion on the same question).

² From 1st of January 2009 until 31st of December 2009 a total of 152 laws were passed in Estonia, which means that on average a new law was passed after two and a half days. This number does not include other

democratic state is that in order to pass a law or to reject a proposal for a law, a majority of some people—whether it is the majority of the parliament who are deciding on that particular law, or the majority of the electorate who are deciding on the law, or exercising their influence on the people who are—has to be convinced that one or the other is worth deciding. While sometimes it seems obvious to all that this or that law needs to be passed, or that this or that proposal needs to be rejected, in most cases there will be someone who asks why that law is necessary or what end it serves or if that law is not detrimental to some of our common values. Those questions are worth asking even if everybody seems to agree on the question of a given law. And whenever such questions are posed, arguments and reasons for or against the law will be given, and in many cases such debates will not only involve the government officials but also the wider public. In other words, in any given state, laws are being passed all the time; in democratic states that process is usually preceded by some argumentation for or against the law, and that argumentation process is usually public in some sense; and it usually makes sense to critically reflect on all kinds of important procedures, to make sure that we are doing the best that we can.

Secondly, it is the case in some countries, most notably in America, that people have already reflected upon the process of argumentation which precedes the passing or the rejection of a law, and have found that some of the arguments that are being used should not be used, or should not be used in that context, or not in that way. In other words, there are *worries concerning the current practice* and it is, at least partly, the job of academic political philosophers to try to solve that issue, or at least examine it, if not for solutions, then possible directions towards solutions. In addition to this actual social issue, the question is a relatively current issue in academic political philosophy of today, which means that there are reasons both outside and within academia for engaging with this kind of question.

Someone might question whether this is sufficient reason for me to deal with the question; after all, the issue of religious reasoning for or against a law in Estonia is not as salient as it is in America. To that I would first reply that I see no reason why I could not be cosmopolitan in my approach, in the sense that I do not think that academia, or at least the part of it which deals with social issues, should confine itself to questions that are relevant to their local communities only, and as I already mentioned, this issue is being debated right now in the international community of political philosophers. Secondly, the fact that something is not a problem for us does not mean we have no

decisions made, which do not have the status of a law, but have similarly great impact, e.g. the decision to extend the Estonian participation in military operations in Iraq and Afghanistan.

reason to deal with it—starting to plan an emergency evacuation procedure when the building is already on fire is clearly too late. Religious reasoning in Estonian lawmaking might not be a problem today, but there is no real reason why it could not become a problem, and as Robert Audi has argued:

[e]ven the risk of an imbalance between religious and secular considerations in democratic societies is reason enough to indicate need for principles that help to preserve a good balance between them. (Audi 2000: 81)

Furthermore, quite a lot of my work here will in the end be applicable also to more general questions pertaining to the argumentation process involved in lawmaking, so I believe that it will be helpful in solving other kinds of issues that might arise. For example, very strong nationalistic or even outright xenophobic argumentation in lawmaking might seem problematic for some, and I do not believe that there would be many who would deny that this is or could very easily become a problem for Estonian lawmaking. In other words, I think that my research here on religious arguments in lawmaking could be used as a guide, or as a “case-study”, in finding answers to other similar issues.

Finally, I reply with some suspicion to the assumption that Estonia is safe from worries concerning the breach of state-church separation or other related problems. First, while it is an established fact that Estonians are the least religious nation in Europe and possibly even in the world,³ and the natural conclusion would be that there is absolutely no reason for worries, that would be a misguided reaction, since it can easily make us miss obvious intrusions of the state-church separation and other similar problems. In other words, I do not deny the assumption but merely ask for more substantive evidence than just appeal to platitude. Second, while the Estonian constitution establishes clearly the state-church separation, we can still see often enough state endorsements of the Lutheran Church: clergy are called to bless schools and they are also always present of all kinds of official state celebrations events; there is also state funding of the Lutheran Church.⁴ In other words, while there is no politically strong and influential religious presence in Estonia, there are quite a few subtle features which seem to go against the assumption that Estonia is safe from worries concerning the breach of state-church separation or other related problems.

³ EUobserver Gallup which covered 143 countries (Vucheva 2009) showed that only 14% of the people consider religion important part of their daily life, Eurobarometer report (2005: 9) showed that only 16% of the people believed that there is a God.

⁴ Although, based on which principles the funding is given, it is arguable whether it actually breaches the state-church separation.

Since there are also numerous ways in which one can engage in a certain intellectual activity, I would like to provide a quick overview of my approach to the chosen question.

The approach I am taking here, it seems to me, is a fairly common and simple one—first, explicating the problem and the terms involved, followed with one possible solution and objections to it, and ending with possible replies and some conclusions about the problem—so I do not see any reason to justify that approach in its general form, but I will try to motivate some of my more specific choices.

To be more specific, the first chapter, although it might seem to be a bit eclectic, will take up several important background and introductory questions, such as explicating in more detail the premises from which I start my discussion, why religious reason might be seen as problematic, and in what kind of cases the discussion is meant to apply. Since that explanation will make references to such things as the public sphere and religious argument, it will necessitate a further explication of those notions.

Having made sense of the problem and the relevant terms involved I can start engaging it in the second chapter, which will present a Rawlsian treatment of the issue. Although there are many for who this is unproblematic, there are, I guess, quite a few people who would rightfully ask: why John Rawls? As we will see, the original Rawlsian solution was not actually even that good, and even the one modified by him and others is not wholly satisfactory. In other words, why start with a solution that does not work? I can offer two, somewhat related, answers to that question: first, the more general answer is that Rawls has just been such an influential figure in 20th century political philosophy and still is somewhat influential in the 21st century.⁵ The second answer is more of a methodological kind; I find it very helpful to start with a “classical” solution, even though it is deemed unsatisfactory by many, just to provide us with a starting point, and then to proceed with the discussion, especially when many authors build their solutions upon Rawls or in direct contrast with him.

As for the content of the second chapter: I intend to start out by explaining a little bit some of the concepts that Rawls is working with and also to show their connection to each other since that will be crucial in understanding Rawls’ argument for his position. I will follow that with the recreation of Rawls’ arguments for his initial position, and then

⁵ It has been noted that the importance of a political theory (or a theorist) can be measured by how much it (or he/she) is attacked and how much other authors feel that they have to situate themselves in relation to that given theory (or a person), and as it happens by those standards Rawls is very important (Nagel 2003: 63). Also an empirical survey by Robert Goodin (2009: 36) of the 10 volume series of handbooks on political science published by Oxford University Press shows that Rawls is the most mentioned author in the sub-field of political theory (excluding pre 20th century authors).

end with his revised position along with some input from other authors who hold a similar broadly Rawlsian position.

The third chapter will present various objections to the Rawlsian solution. There are altogether six major categories of criticisms. In discussing each of them I will also mention replies that could be provided from the Rawlsian position. The fourth and final chapter will present an argument from toleration in favor of a position which, broadly speaking, shares the sentiment of a Rawlsian position. I will also look at how this position is superior in relation to the position presented in chapter 2 and how it is able to deal with the objections discussed in chapter 3.

Chapter 1 — Setting the Scene

As I explained in the Introduction, I am interested here in public justification in different kinds of situations—the actual official procedure involved in lawmaking, the more general preceding discussion of lawmaking, and the discussion about the application of a law to a certain case—by using religious arguments. In what follows I will explicate the problem more clearly and try to explain why someone might think that religious arguments are not suitable on such occasions. I will also try to make it more clear what part of our daily life my discussion is supposed to affect. In the process of doing this I refer to some concepts—*public sphere* and *religious argument* in particular—which at first glance might seem clear and unproblematic, but which need some treatment and explication to avoid any miscommunication.

1.1 The Premises

Before I can engage with the issue, some groundwork has to be done, namely the explication of premises. The first premise from which I and many other authors start our discussion is what Rawls (1996: 137) calls the liberal principle of legitimacy according to which the state's exercise of (coercive) power is legitimate only if it is justified to all, which means that there has to be some process of reason giving. This idea derived from the early modern contractualist tradition which thinks that the state gets its political power from the consent of the people, which is itself based on the idea of natural freedom of human beings or their inherent political autonomy.

It has been suggested by Nagel (1995: 33) that it is the very essence of any, and not only liberal, political theory "to justify a political system to everyone who is required to live under it". I am not sure if I am willing to take a very strong position on the issue of human rights and claim that people have this right to freedom in some ontological sense, that it is possessed by all solely by virtue of their belonging to the species of *homo sapiens* (or by their moral agency, or capacity of rational choice) and that is not the product of some voluntary act. For our current purposes this natural freedom could also be understood in the weaker sense that over the past centuries our political thinking has developed in a way that we have come to think that people are naturally free, so their natural freedom is just a matter of convention. It does not matter, since in both cases we think that we ought to treat people as if they had a natural right to freedom in the strong sense.

The next crucial question is how to organize this reason giving for political justification. Conceptually speaking, we have two options: to regulate or restrict this reason giving

process somehow, or not to do so. Since from the first premise we hold that people are naturally free, the obvious reaction should be why could we not just adopt a *laissez-faire* approach to public debate? The metaphor of the market of ideas is not a new one; one of the most famous proponents of it was John Stuart Mill, who advocated for this kind of approach on the grounds that there is always something to be learned from other opinions or at least one gets to know one's opinions better (Mill 1978: chapter 2, Waldron 1993: 836–839). The basic idea of this kind of approach is that if justification is needed, and to get justification you have to provide reasons, then why not let everybody offer all kinds of reasons and let the demand-supply mechanics work out which reasons are good enough for justification and which are not.

If we were to continue to use the market metaphor, I could easily demonstrate one rather big flaw in this approach to public reason. I am willing to concede that it would not only be silly but also harmful to try to regulate the market such that chocolate would be strongly favored over vanilla. Furthermore, most would agree that there is even no real point in trying to restrict even the weirdest of flavors of ice creams.⁶ But at the same time, there is very good reason to restrict the distribution of defective products (defective not in the sense of cool looking partly torn jeans which is both intentional by the producer and known to the consumer). The sense of defective I have in mind is the product or the service having some (unintended) negative property for the consumer, for example, that it has gone bad or is otherwise dangerous to the consumer. It is important to note here that there are also two kinds of products and services that are defective: ones which are defective by accident and ones which are defective intentionally; people who supply the former kind are sloppy or have just made an honest mistake, but the people who supply the latter kind are just immoral.

Just as there can be defective products and services, there can be defective reasons. If there are defective reasons, then surely they will have no beneficial effects once people know that they are defective and surely they will have harmful effects before people know that they are defective. Similarly, people will avoid buying products they know are defective and will be harmed by buying products which they do not know are defective. But if certain reasons either will not be beneficial or will be harmful, then we have good reason to exclude them from the marketplace. And just as there are always those two kinds of defective products and services, there will always be two kinds of defective reasons provided in the free market of ideas. Therefore, we will always have good reason to exclude at least some reasons from public reasoning. From this I take my second premise that the justification which is provided has to be based on a certain kind of

⁶ Supposedly there is for example spinach and garlic flavored ice cream.

reasons; since there can be various criteria, I will refer to those kinds of reasons independent of any specific position as “the right kind” of reasons.

Besides the principle of legitimacy, there can be also additional motives to reason publicly. One such motivation is moral; Fred D'Agostino and Gerald Gaus (1998: xiii) take this back to Kant:

Kantian answer to the question 'Why reason publicly?' is more moral than epistemological: if we are to respect other we must not make moral or political claims *on them*—especially claims backed up by the threat of force—that cannot be justified *to them*.

So it is not just a search for political legitimacy for our collective actions, but also a search for legitimation for our individual acts, which we owe to others if we are to consider them free and equal. Without such justification we would merely try to subjugate others to our will, disregarding their freedom and equality.

1.2 Why Religious Arguments Could Be Seen As Problematic

In the introduction I pointed out two reasons why religious arguments might stand out from other kinds of arguments in providing public justification: one of them was what Rawls calls *the fact of pluralism* and the other was *the state-church separation principle*. The first of these actually has another side to it; not only is there a great diversity of religions in modern liberal democratic societies, but there is also a considerable portion of the people who consider themselves to be atheists, agnostics or indifferent towards religion. Since I do not intend to get involved in the sociology of religion, I will take the diversity of religious standpoints in modern liberal democracies and the partial secularization of those societies for granted, as have many authors who have written on this and related topics (Rawls 1996: 3–4, Ackerman 1989: 22, Taylor 2007: 1, Dacey 2008: 30–31).

The reason why there might be a problem for religious arguments to provide justification is fairly simple: if someone provides a religious argument from a specific religious standpoint, it will not be accessible for others who are in a different religious or indeed a non-religious standpoint. Since I distinguished justification from persuasion, the problem is not that a particular argument fails to persuade some particular audience, but the problem is that a particular argument is *in principle incapable* of doing the work that it is intended to do, that, is providing public justification.

The idea of a separation of state and church is in large part constituted by the commitment to religious freedom and religious toleration for which Enlightenment authors like John Locke and Baruch Spinoza in their *Letter Concerning Toleration* and A

Theologico-Political Treatise respectively argued. Whether due to their writings or not, by the 19th century, religious freedom and religious toleration had become an integral part of liberalism; thus Benjamin Constant wrote in his famous speech, *The Liberty of the Ancients Compared With That of the Moderns*, delivered in 1816, that with 'liberty', among other things, we understand "everyone's right to associate with other individuals, either to discuss their interest, or to profess the religion which they and their associates prefer" (Constant 1988: 311, my emphasis) and Mill wrote in 1859 in his *On Liberty* that:

the appropriate region of human liberty...comprises, first, the inward domain of consciousness; demanding *liberty of conscience* in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or *theological*. (Mill 1978: 11, my emphasis)

Based on the commitment to religious freedom and religious toleration, Audi (1989: 263–264) has identified three principles guiding the practice of the separation of the state from the church: *the libertarian principle*, according to which the state should allow the practices of any religion (within certain limits); *the equalitarian principle*, according to which the state ought not to give preference to any one religion over others; and *the neutrality principle*, according to which the state should not favor or disfavor religion as such. If we want to take these principles seriously, as we should if we want to stay true to our commitment to religious freedom and toleration, then introducing religious arguments into lawmaking and application can be seen as problematic. As Baroness Mary Warnock has put it:

They [British MPs] must not ask, "What does my religion teach about this measure?" but "Will society benefit from it in the empirical world?"...it is essential to hold on to the fact that in this country we are not a theocracy, but a democracy. (Warnock 2008)

1.3 The Range and Nature of Public Justification

Although the next point I want to make should be relatively obvious, I think it is still worth spelling it out. Since the issue here is public justification, the range in which the use of religious arguments is called into doubt is that which could be called *the public sphere*. I have no intention of criticizing free speech in the sense that people could no longer use religious language in literature or when giving an interview on a talk-show. When it comes to *expressing one's opinion* then there are very few (if any) cases where I prefer restricting speech. Furthermore there are some contexts where the use of religious arguments is unavoidable, for example in theology. The idea is to regulate *advocating for positions* concerning lawmaking and law application with the intention to influence the

actual practice; it is only when somebody is advocating for or against some public matter⁷ that we should start looking carefully what kind of argument is being used.

What I mean is that two people engaged in an academic debate are both advocating for a position, but their intention is not to influence any laws, but to impress the jury, so that they might win the debate. But if two politicians are engaged in a political debate they are also both advocating for a position with the intention to influence the laws (although, often this influence is not meant to be direct, for example, when the primary aim is to gain votes in order to be able to influence the laws). We could also compare two people discussing the validity of a ruling by a supreme court judge with a glass of beer and two actual supreme court judges discussing how to rule and how to justify that ruling on a specific case. Once again, there need not be any additional limits to common courtesy and intellectual honesty in the first case, while there may be some additional limits in the second case.

One small related point is that when it comes to providing public justification, the argument which is supposed to present the reasons need not be actually verbalized or expressed in any other form to still be affected by whatever regulations all verbalized arguments intended to provide public justification are. What I mean is precisely what Warnock meant in the article I quoted earlier: when a member of a parliament is contemplating whether to vote for or against a law and finally comes to a decision based on a process of reasoning, nobody might ever ask that representative to provide a public justification for her decision, but nevertheless, since she was considering a public matter, the reasoning behind her decision should be able to provide public justification, if that were required of her. It has been argued by some authors (Waldron 1993, Perry 2009) that whatever restrictions there are on public debate, they cannot be applied to voting. But if we were to take that approach we would open up floodgates of hypocrisy, since people could be saying one thing and act quite differently, as Rawls (1996: 215) has noted. Therefore the range of whatever requirements are set for political justification does not end when the public official becomes an ordinary citizen, but the range is determined by the action the particular citizen is engaged in.

1.4 What Is the Public Sphere

When one makes use of such notions as 'paradigm', 'family-resemblance', or 'public sphere' in my case, which have received extensive and influential treatment by an author previously, one runs the risk of unintentionally dragging along connotations which one

⁷ Public in the sense that it pertains to matters of state, excluding other areas like aesthetics for example.

would rather avoid. Jürgen Habermas has presented a fairly thick and rich notion of the public sphere in his seminal work *The Structural Transformation of the Public Sphere* which was first published in 1962 (and translated into English in 1989). I cannot go into the details of his treatment here, so I have to limit myself to a very superficial discussion.

According to Habermas (1974: 49; 1991: 27–28), then, “the public sphere” refers to that part of our social life where *public opinion can be and is formed*. To do this, the people first must have the right and the opportunity to congregate and freely express their opinions and then exercise those rights concerning matters of general interest. Since those interests can range from art and literature to politics, Habermas distinguishes the “literary public sphere” from the “political public sphere”; the former concentrates on discussion of art and literature and other such matters and is usually confined to the privacy of one’s home, while the latter concerns discussions of politics and other such matters and is usually public in the sense that it takes place in a public place or involves people outside one’s immediate family. The main objective of the political public sphere is to perform a certain controlling function *vis-à-vis* the state, both in an informal way by discussion and public expression of opinion and in a formal way by participating in elections.

Those proceedings which meet Habermas’ description (1974: 50–51; 1991: 7) first arose in the 18th century when a number of necessary social and economic conditions were met, most importantly the existence of a reasoning public. The crystallization of the public sphere came about with the bourgeois constitutional states of the 19th century, which guaranteed the conditions for the public sphere in law (Habermas 1974: 51–53).

According to Habermas’ (1974: 54; 1991: 200) analysis this kind of understanding of the public sphere, while still informative, cannot be applied in this very same form to industrially-advanced, welfareist mass democracies of the 20th century. Habermas identifies three major changes. First, there was a dramatic expansion of the public sphere beyond the bourgeoisie, which meant that it lost its coherence; therefore, all of the laws which could be described as having come about “under pressure of the street” are no longer based on any real consensus, but rather on compromise. Second, there has been a real change in the roles of agents such that some political powers have assumed social roles and vice versa; in other words, the public and the private sphere have mixed into one massive “societal” complex.

The third, and probably somewhat censorious aspect, is the steep decline in the critical functions of the public sphere and the lack of serious rational-critical debate—the world of modern mass media is devoid of it. The public no longer comes into existence by the congregation of people interested in engaging in discussions, but it is merely created by the very same people the public sphere is supposed to keep in line, and only on a temporary basis. Public opinion is no longer formed by the public itself, but manufactured (Habermas 1974: 55, Habermas 1991: 222).

I would like to point to three points on which I differ from Habermas' understanding of the public sphere. The first, while being a rather minor one compared to the others is by no means an unimportant one; namely, Habermas identifies a *very clear and specific history of the public sphere*—from its predecessor, representative public, to its development in the 18th century, its consolidation in the 19th century and consequent demise in the last century. I have no ambitions of making such historical claims, describing the nature of the public sphere at a certain point in time, or any causal narratives about its development. In other words, Habermas' notion of public sphere includes a historical aspect, to which I do not pay any attention (not that I think it is unimportant, but I do not think it is relevant for me).

The second is a more fundamental point about what kind of an entity the public sphere is. For Habermas the public sphere is a *particular social phenomenon* which last existed in its proper form in 19th century Western Europe and the United States where the bourgeoisie gathered in public places to engage in rational-critical debate about matters of state. This public sphere could only come into existence when (i) there were people with certain capabilities (for rational-critical debate) and interests (in matters of state) and those people (ii) found themselves in the proper conditions for being able to congregate and express their opinions. For me, the public sphere refers only to the arena of public rational-critical debate; the way I conceive it, the public sphere exists whether someone uses it or not.⁸ To put it roughly, when I speak of the public sphere, I am only referring to the conditions of the political public sphere in Habermas' terms.

This leads me to the third difference about the state in which the public sphere is. For Habermas *the current situation is debased*: due to the methods of the mass media and the rapid expansion of the public sphere, there is a real lack of serious rational-critical

⁸ I do have to note here that in practical terms, when there is no one who uses the public sphere in my sense for a public rational-critical debate, then it can be fairly plausibly assumed that it would soon cease to exist. Whether for reasons which could be described by using market economy language—if there is no demand, then there is no rationale for supply—or political repression—if no one is willing to step up and engage in public rational-critical debate, then there will more than likely be people who will take advantage of the situation and to cover their bases, remove the conditions which would make any future debate possible.

debate; another point is that there are various ways in which the public is being worked on and directed, instead of being independent and autonomous as it should be to perform its objective in checking for the domination of the state and the illegitimate use of its power. In this respect, I am much more optimistic than Habermas, and that is of course due to the fact that for me the public sphere is constituted by only the conditions for public rational-critical debate, and those conditions are definitely not in dire straits. It should be noted here that there are people who are as worried as Habermas about the state of the public sphere, for example, Austin Dacey (2009) and also the people who are seriously worried about the libel laws in Britain, which hinder healthy discussion (Sparrow 2009, Glanville *et al.* 2009).

1.5 What Is a Religious Argument

Another important aspect to consider is that when the usage of religious arguments in public rational-critical debate is under consideration, then the very idea of a 'religious argument' needs to be cleared up, otherwise we have no clear account of what this phenomenon is that we are talking about. Taking that path, it would seem logical to provide an account of religions in general and then, based on that, more specifically an account of religious arguments. Obviously that course of action would require extensively longer and deeper treatment than I am able to provide here, being restricted both in space and knowledge. For that reason, I will only concentrate on only some of the aspects of what makes something a religion, but I think that it will suffice for our purposes. In the following discussion of a religious argument, I will rely on Audi's very insightful analysis of the concept.

William Alston (1964: 88) proposed a list of nine features (I have reordered the list and somewhat rephrased some of the points), all of which are relevant, but none which are strictly necessary for something to be a religion:

- (1) Beliefs in supernatural being(s).
- (2) A moral code believed to be sanctioned by the god(s).
- (3) Prayer and other forms of communication with god(s).
- (4) A distinction between sacred and profane objects.
- (5) Ritual acts focused around sacred objects.
- (6) Characteristically religious feelings (such as awe or sense of mystery) which are associated with god(s) and arise in connection with sacred objects or rituals.
- (7) A general world-view with the individual's place and significance in the world.
- (8) A more or less total organization of one's life based on that world-view.
- (9) A social organization bound together by the aforementioned characteristics.

Within the scope of this work one additional feature should be mentioned, and that is *political relevance or a potential for political impact*, since without it a certain loosely tied set of ideas or a thick doctrine might or might not be a religion, but it would not matter for our purposes since it would not enter into the public debate in the way or the places which are important for this work. This move however requires me to make some further qualifications about the nine features cited from Alston, since if none of them is considered to be strictly necessary, but political relevance is, then something which we would not consider to be a religion in the ordinary sense of the word could now become one. And it is not only that something strange could become a religion, but also something that is secular, like an ideology, which in most cases is politically relevant, but which can also be thought of as exemplifying features (7) and (8) (at least).

For this reason, I would also add a second necessary condition *having feature (1)*. This is mainly because one of the main reasons why a religious argument might not be accessible for others outside of the particular religious standpoint is the fact that it makes some claims about the existence of some transcendental being and derives further claims from that. A similar account of the concept of religion is also presented by Brian Leiter (forthcoming).

Not wanting to get into the ontology of institutions and ideas, I will have to disregard the possible objection that in some cases ideologies do incorporate a belief in one or more supernatural beings, for example the idea of "The Party" or the "Union of All the Workers of the World" which could perhaps be found in the communist ideology, or some other such beings. My dismissal would just be the reply that even if somebody is able to plausibly demonstrate that there is belief in such beings and those beings are deemed to be supernatural, then they would be supernatural in some other sense of the word, at least when we look at it from the perspective of a religious person. In other words, one might have the belief that *justice* or *liberty* is some supernatural being and is supernatural in the same way as the Christian God, but most likely for a devout Christian the supernaturalness of her God is different from the supernaturalness of such political concepts as justice or liberty.

Christianity, Islam and Judaism—the three paradigm cases of religion (in the ordinary sense of the word) in the Western world all meet the two necessary conditions and also all of the other features. One further feature that these religions all share is the fact that they are theistic. This is important, as Audi (2000: 34) has pointed out, because theistic religions (the matter of whether there can be such a thing as non-theistic religions is of course debatable) tend to pose—other things being equal—a far more serious threat to

church-state problems, due to the fact that they are in certain ways authoritarian, which gives all the more reason to deal with them rather than some "religious institution" which consists of some local residents of a New York resort town who have been "ordained" with the intention of getting tax benefits (Audi 2000: 57). It also is worth noting here that while a certain vagueness about what counts as a religion might persist even after a far more extensive treatment of the issue, in our everyday practices we have few difficulties demarcating religions from non-religions in the (politically) important cases.

Having set down the two necessary conditions, and listed some additional ones which are also relevant, the next issue to tackle is: what counts as a religious argument? In dealing with this issue, as already noted, I will mainly rely on Audi's analysis which I find very helpful and to the point. Audi distinguishes four sufficient criteria for an argument to be religious: *the content criterion*, *the evidential criterion*, *the motivational criterion* and *the historical criterion*. I will discuss each one of them in turn.

The content criterion states that an argument is religious if it *has essential religious content* as opposed to mere quotations from a religious source. Examples of this include references to divine command, appeals to scripture or to a religious leader. It is important that the religious content is substantive, which means that by only mentioning and not endorsing the religious content, one is not making a religious argument. There can be special cases, for example, a politician might argue for a law based on the fact that a vast majority of their electorate supports it based on religious views; in those cases it is important to ask whether the religious grounds the constituents have are cited just to give additional information about their position and about how fervently that position is held, or are cited as reasons which are supposed to add justificatory power to the politician's argument because the position of the electorate is religious. (Audi 2000: 70)

As the examples show, this is the most obvious criterion upon which to decide whether an argument is religious or not. Assuming that we have a more or less clear understanding of what counts as a religion and we are able to identify what parts of the argument endorse or assert certain substantive statements, the detection of religious content will be relatively easy. This also means that contentually religious arguments are the most frequently used religious arguments and thus also most often seen as problematic when used in public rational-critical debate in a liberal democracy, since they rely on doctrines which are substantially very different from the liberal doctrine in the most general sense.

According to the evidential criterion an argument is religious if *its justification is based on a religious source*, more specifically if (i) its premises, (ii) its conclusions, (iii) both, or (iv) its premises warranting the conclusion cannot be known or accepted without taking into account religious considerations, such as scripture or divine revelation. The main reason Audi finds it necessary to delineate the evidential criterion from the content criterion is that while most arguments which are evidentially religious are also religious content-wise, there can be evidentially religious arguments with no religious content, for example, the natural law arguments against contraception, where the crucial premise 'the natural end of intercourse is procreation' arguably cannot be accepted aside from religious considerations, and even if it could, then the inference from that premise to the conclusion would require some religious considerations. (Audi 2000: 71–72)

As noted, not all arguments that are counted as religious based on their content need be religious based on their justification and *vice versa*. These first two are both fairly unproblematic conditions: either the argument makes a substantive religious claim (as opposed to just using religious rhetoric or religious references without endorsement) or the argument has no substantively religious content, but it relies on religious content.

The third, motivational criterion says that an argument is religious *if it is articulated (or presented otherwise) in that particular instance by that particular person based on wholly or at least essentially religious motivations*, such as desire to do one's religious duty or be obedient to God. Audi stresses that there is a fundamental difference here from the first two criteria since those applied to arguments in a more abstract way—independent of why or how they were presented or if they were presented at all—since the content and the evidential bases are tied to the argument. But this criterion applies to arguments in a more concrete way—requiring that they be presented by a particular person(s) in a particular situation—since the motivation for providing an argument is very individual and varies from person to person and even in the same person from situation to situation. (Audi 2000: 73)

This means that a motivationally religious argument need not have a religious evidential base or content, which is the reason I find it to be one of the most important criteria since it helps (or at least in principle should help) us to identify religious arguments which are not otherwise that obvious as religious arguments. In other words, if someone were to argue successfully for a position that religious arguments should not be used in some or all cases of public rational-critical debate and reform the public debate of a certain community, then being able to identify arguments as religious based on a

motivational criterion is essential since otherwise all that has been achieved is the translation of religious arguments into secular language.

The problem with this criterion is that it is very hard if not impossible to see into other people's heads and to know what their motivations are. And even if we assume that we are able to indentify motivations in general, then in the case of religious people it very well might be that they are motivated in everything that they do by religious considerations, which means that all of their arguments would count as religious. Since we cannot choose what motivates us, then paring this criterion up with a restriction on religious arguments would be very unfair and impractical.

The fourth—the historical criterion—is also such that it is meant to apply to particular instances of an argument rather than some argument in abstract form; and according to it an argument is historically religious when in the particular usage of that argument it *can be traced back via a cognitive chain to one or more religious arguments* in the above senses. The reason this criterion is meant to apply to specific instances is that the persuasiveness depends on the audience, which also means that we can distinguish two kinds of historically religious arguments: those, which are fully dependant on their historical basis, and those, which are not. (Audi 2000: 74)

While the third criterion seemed to be to very insightful but nevertheless problematic, then the fourth seems somewhat suspicious, for the reason that under this criterion one could in principle be making a religious argument without being aware that one is making it. For example, one might be aware of the fact of what kind of arguments convince one's audience, but be ignorant of one or more of the historical origins of the argument; or it might be the other way around: one might be very aware of the historical origins of the specific argument and be mistaken about which of them appeals to one's audience. The problem of unknowingly presenting a religious argument could in principle arise also in the other three cases (one could be wholly ignorant of all kinds of theological facts, or be mistaken about one's motivation) but it seems that those are fairly unlikely scenarios.

Due to the problems with the third and the fourth criteria, for the purposes of this thesis I will refer to religious arguments only insofar as they meet either the first or the second criterion. In the next chapter we will see that applying either of the other two criteria would even be incoherent with the idea of public reason as Rawls presents it.

It is worth pointing out here that none of there criteria is somehow specific to demarcating religious arguments. If we were to substitute the expression 'religion', for

example, with the expression 'comprehensive doctrine',⁹ there we would be able to identify arguments that are of a certain comprehensive doctrine; for example an argument presented based on utilitarian motives could be classified as a utilitarian argument. Whether we want to do anything like that is a totally different matter; my point here simply is that those criteria are meant to be as general as possible.

⁹ This is meant here in a very specific Rawlsian sense, specified in Chapter 2.

Chapter 2 — The Standard View

The aim of this chapter is to present the Standard View on the question of political justification. One of the most prominent examples comes from Rawls and thus his theory will occupy most of this chapter. In the last section I will briefly outline some other authors' views. To get an adequate and fair picture of what Rawls has to say on the issue of political justification, I will have to go through most of the argumentation of his *Political Liberalism*. While this elaboration might seem long, I believe it is necessary; for example, the assumptions that Rawls makes are the assumptions that underpin other authors' views; also he has gone through huge troubles to elucidate many of the concepts that he uses and thus, to fully appreciate his position, there is actually no other way to proceed.

2.1 Political Liberalism in the Context of Rawls' Overall Project

Rawls' aim in *A Theory of Justice* (*TJ*) was to work out the idea of a social contract which would not be vulnerable to the traditional objections and which would be able to provide a viable alternative to the tradition of utilitarianism. It also put forth a conception of social justice, which would most closely resemble our considered judgments. This conception of justice is named by Rawls justice as fairness. The problem was that in his earlier work Rawls did not make a distinction between *comprehensive* and *freestanding or political* conceptions of justice. The theory presented in *TJ* was a comprehensive liberal theory, but that meant it is an unrealistic given the general nature of democratic states. The aim of *Political Liberalism* (*PL*) is to provide a remedy to this problem; to do that Rawls has to introduce many new concepts such as freestanding or political conceptions, overlapping consensus and public reason. (Rawls 1996: xvii–xviii)¹⁰

To put it very bluntly, *TJ* dealt with the theoretical questions of justice and *PL* takes a more practical turn and asks on what we need to concentrate if we want to adopt what was proposed in *TJ*. This is the reason that Rawls takes up in *PL* the questions of stability and legitimacy: how could a society operating under some conception of justice be stable or legitimate? It is worth mentioning here that while Rawls' discussion leaves open which conception it is, he thinks that justice as fairness is the most reasonable conception (xlviii–xlix). More specifically, in *PL* Rawls is interested in "stability for the right reasons" (xxxix n. 5). The set of new conceptions mentioned are meant to explain how stability and legitimacy might be achieved.

¹⁰ Unless otherwise indicated, all references in this chapter are to (Rawls 1996).

It should be noted that Rawls' motivation to develop justice as fairness as a political conception of justice, and then see how it could be used to order a society such that it would be both stable and legitimate, comes from the fact that he sees that what he wrote in *TJ* would not be able to answer these questions satisfactorily. Also, the famous idea of public reason which Rawls proposes, which is pretty much the gist of the standard approach to the question of political justification, does not serve a central role in Rawls' overall project. In other words, the question of political justification is not his primary concern, and an answer to the question I am interested here comes up almost as a byproduct.

Most of what remains of the chapter will present Rawls' argument from *PL*. I will start first with some descriptive aspects, namely the way Rawls sees the society and the people it is comprised of; the nature of different doctrines is also touched upon. The next sections will describe the outcome that Rawls wants to achieve, namely, the well-ordered society, and the mechanism by which it is possible to achieve it, namely, the overlapping consensus. In the last sections, the idea of public reason, as the practical rules of public debate in a society which is well-ordered by a political conception of justice, is presented along with some of the arguments concerning why this kind of approach should be taken and what are some of the (internal) problems of public reason. I will end the chapter with a brief survey of other versions of the Standard View and will then try to generalize to some common points.

2.2 Facts about the Society

It is debatable how many facts about the society Rawls has in mind, since he does not name all of them as "facts"; nevertheless they are assumptions from which he proceeds with his discussion. First, the society, as in *TJ*, is viewed as closed, as an abstraction, both in the sense that it has no relations to other societies and it is "self-contained", and in the sense that people enter into it only by birth and exit it only by death (12). At the same time, the society is taken to exist perpetually; "it produces and reproduces itself and its institutions and culture over generations and there is no time at which it is expected to wind up its affairs" (18). Furthermore the political power that the society has is seen as the collective power of all the members of the society (xlv). The first two aspects are necessary to get a "purer sample" of the society, one which would not be "contaminated" by, for example, migration or international relations; the third aspect derives from the conception of persons Rawls has, but more on that in the next section.

There are some specific characteristics of a democratic society: the first and probably most central is the fact of pluralism; for Rawls (3–4) a "democratic society is always

marked by a diversity of opposing and irreconcilable religious, philosophical and moral doctrines". This pluralism encompasses all the different comprehensive doctrines in a given society, most of which will be reasonable, but some of which will be "unreasonable and irrational, and even mad" (xviii–xix). Reasonable here means that the doctrine does not reject the essentials of a democratic regime, but we will see later that the notion of reasonableness Rawls employs in the case of individuals gives a different understanding of what a reasonable doctrine is. He adds that this pluralism is necessary due to "free practical reason within the framework of free institutions" (37). This leads to the second fact, the fact of oppression, that this kind of pluralism could be undone by state coercion and, in fact, this is the only way it is possible (38). In other words, people in a democratic regime hold different opinions about various fundamental questions and given the specific understanding of the aims for which state coercion should be used, this disagreement is here to stay.

The third fact states that "an enduring and a secure regime /.../ must be willingly and freely supported by at least a substantial majority of its politically active citizens." Although Rawls does not refer to it as such, this could be called the fact of support. In other words, despite the plurality of different doctrines people affirm, the majority of them will have to freely support the regime for it to be stable. The last, fourth, general fact about the democratic regime could be called the fact of shared basis and, according to it, a democratic regime which has worked reasonably well over some period of time will have, at least implicitly, within it some fundamental shared values which give the common basis for a political conception of justice (38 n. 41). As an example Rawls (8) mentions the rejection of slavery as a conviction which is held by all (although it was not always so), and anybody who does not share this conviction, is not taken very seriously in public discourse. After these shared deep convictions have developed over time, they act as fixed points upon which people can start building their theory by using the reflective equilibrium method (i.e. by adjusting the theory based on their general convictions and particular judgments and *vice versa*).

Since there have been references to comprehensive doctrines and also to freestanding or political (non-comprehensive) conceptions, it should be mentioned what exactly Rawls means by those expressions. Comprehensive doctrines have three main features:

- 1) they are exercises of theoretical reason, meaning that they cover the major religious, philosophical and moral aspects with consistency and coherency;
- 2) they are exercises of practical reason, setting up the hierarchy of the different values and balancing them in real life situations;

- 3) they are usually based on some tradition and are slowly evolving, not popping into existence just like that or changing direction arbitrarily (59).

As examples of comprehensive doctrines, Rawls mentions both Kantian and Millian liberalism, but also utilitarianism and justice as fairness as it is presented in *TJ*.

The political conception differs from a comprehensive doctrine in three respects:

- 1) a political conception of justice has a specific aim, namely the structure of the society, while a comprehensive doctrine does the same for the whole life;
- 2) accepting a political conception of justice does not presuppose accepting any specific comprehensive doctrine, it is supposed to be something that everybody can endorse;
- 3) a political conception of justice is not formulated in the terms of any comprehensive doctrine (175).

So the main feature of something being comprehensive is that it includes a conception of what is valuable in human life and what is the ideal of personal virtue; the difference is in the scope of topics which get covered. Based on that distinction, and due to the fact of pluralism and also the idea that basic principles of justice ought to be shared by all, Rawls differentiates the domain of the political. According to this, citizens' overall views are divided into the domain of the political, which includes or is the basic principles of justice, and the other domain, which includes or is the comprehensive doctrine which the citizen affirms, which does not deny the possibility of its relatedness to principles of justice (38). Thus the political domain will include *all* and *only* such things as every citizen can endorse (137).

This distinction means that Rawls presents us with something that is not meant to cover every aspect of our life, but only one, although a very important, aspect of our political life, which for Rawls includes the questions of justice and the basic structure of our institutions.

It was mentioned earlier that one characteristic of a reasonable comprehensive doctrine is that it does not reject the essentials of a democratic regime; as an example we could think of a fundamentalist religion. Another aspect is that reasonable comprehensive doctrines are such that they are supported by reasonable people, while unreasonable people will support doctrines which are not reasonable. It should be noted, however, that if a doctrine is supported in an unreasonable fashion then, that alone is insufficient to make a doctrine unreasonable. But what exactly a reasonable person is comes up in the next section.

To briefly sum up: what Rawls has in mind is a society which is necessarily pluralistic and this pluralism extends over all the questions of value in human life; but this society has also developed over time some common shared opinions which can serve as a basis for a conception of justice which extends only over political questions of value and which could be supported by all.

2.3 Aspects of Persons

There are three major features which people have to have in order for them to belong to the set of people which has been called "the legitimation pool" (Friedman 2000: 16). For the purposes of the legitimacy of a regime, only the opinions of the people who are among "the legitimation pool" count. If someone lacks any of the three features, they are considered to be defective in the sense that the political opinions of those people simply do not count.

In no particular order, these three features are: being reasonable, being rational and being free. Being reasonable is defined in two aspects: first, reasonable people are willing among equals to propose principles and standards as fair rules of the game and to play by them, assuming that others follow suit. The proposed rules are such that they reasonably think that the rules can be reasonably accepted by others, but they are ready to deliberate on others' suggestions—this is called the *criterion of reciprocity*. By contrast, unreasonable people are unwilling to propose or accept if others propose fair terms of cooperation. (49–50)

The second aspect of being reasonable is accepting *burdens of judgment*, general states of affairs which are causes to reasonable disagreement. Burdens of judgment are invoked as an explanation for the fact which Rawls noted earlier, namely, the fact of reasonable pluralism. One could say that people tend to favor doctrines which advance their interests and since their interests are different, they therefore support different doctrines; or one could say that people are often irrational or just make mistakes and that gives rise to reasonable pluralism. But Rawls does not consider those to be very good explanations, since he is interested in more conceptual aspects of reasonable disagreement. (54–55)

Thus Rawls (56–57) lists six of the most important general states of affairs which are the causes or sources of disagreement among reasonable people and notes that there are more: the six include:

- 1) the evidence on the matter is inconclusive;
- 2) both sides agree on the relevant considerations but not on their weight;

- 3) the concepts that are used are vague, so sometimes hard cases arise;
- 4) sides' total experience differs and since the evaluative process is dependent on this, there are bound to be differences;
- 5) it might be that there is strong normative power on both sides;
- 6) our social space is limited in including values, so some things are bound to be left out.

The list does not include such things as prejudice, bias, willfulness, etc; while they do play a role in generating political disagreement, they are not sources of *reasonable* disagreement.

Based on the two aspects, we can now add that a reasonable doctrine is one which is willing and able to meet the criterion of reciprocity and to recognize burdens of judgment (xlix). This means that the doctrine prescribes to its holder the requirement of proposing fair terms of cooperation among others, provided that others are willing to honor those terms, and that the doctrine does not make claims which are not warranted when taking burdens of judgment into account. Once again, a fundamentalist religion would serve as a good example.

Being rational is meant by Rawls (50–52) in a fairly traditional way, meaning it is about prioritization of the content agreed as reasonable and also about the choice of means. The important difference between the two is that rational people lack the ability/tendency for fair cooperation, which is the hallmark of reasonable people. But people need to be both—if they lack rationality, they would be unable to set any aims for themselves and choose means for achieving them; if they lack reasonableness they, would pursue their aims without a guiding principle of justice and thus would not be able to engage in fair cooperation, i.e. to live together as a society.

Persons are free in so far as they possess two moral powers: a capacity for a sense of justice and a capacity for a conception of the good. These are the necessary requirements for people to engage equally in social cooperation. By sense of justice is meant the ability to understand and apply the political conception of justice which is employed to organize the particular society, while by capacity for a conception of the good is meant the ability to have, revise and pursue one's own good in life. (19)

Additionally people are free in two other respects:

- 1) We think of ourselves and others as self-authenticating sources of valid claims; based on our conception of the good, there seems to be something to which

we are entitled, and those entitlement claims are taken to be valid claims since we are the ones making them (32).

- 2) We think of ourselves and others of being capable of taking responsibility for our ends, so that when we make entitlement claims we take into account what can we reasonably expect from reality, so we do not just utter nice words, but also consider the practical implications (33–34).

To sum up: persons who make up the society under consideration, and to whom this is all meant to apply, are free in the sense that they are able to tell what is just according to the conception of justice which is used to organize the society they live in, and they are also able to tell what is good for them personally. In deciding those two things, they acknowledge the possibility of reasonable disagreement due to burdens of judgment, but they nevertheless are willing to propose some fair terms of cooperation which would govern their rational pursuit of what is good and just.

2.4 From Overlapping Consensus to Well-ordered Society

The stable society, viewed as a fair cooperation between free and equal citizens, which is the aim of *PL* is marked by the fact that it is well-ordered, which means three things:

- 1) every member of that society accepts, and knows that everyone else accepts, the very same principles of justice;
- 2) its basic structure of institutions is publicly known, or with good reason, is believed to satisfy those principles;
- 3) each member of that society has an effective sense of justice, meaning that they do not only accept but also comply with the principles of justice and therefore the basic structure of institutions. (35)

While Rawls admits that this is a highly idealized concept, he also thinks that any conception of justice which fails to well-order a democratic regime is inadequate for it.

Given the features of a well-ordered society, the conception of justice which well-orders a society must be able to develop a sense of justice in persons who grow up under the institutions of that conception and also, given the fact of pluralism, be confined to the domain of the political, in the sense discussed above. It further means that it must be the focus of an overlapping consensus. (141)

In an overlapping consensus, “the reasonable doctrines endorse the political conception, each from its own point of view” (134). In order for a society to be well-ordered it needs a conception of justice; if it is such that every politically active member of the society can endorse that conception from their own point of view, then this consensus is properly

called overlapping. Since we found that the conception of justice has to be political, the overlapping consensus will also only include political values, which means that questions of justice and constitutional essentials have to be settled by using only those values and also those values will have to be given priority over non-political values. It should be noted here that while overlapping consensus might include parts of the comprehensive doctrines that are represented in the society, it does not say anything about the truth of the various doctrines. (137–138)

This will of course raise the issue of sufficiency: how is it possible for us to hold a comprehensive doctrine and yet to rely only on overlapping consensus when dealing with questions of justice and matters of constitutional essentials? Rawls (139–140) has a two-part answer to that question: first, the political values which are included in the overlapping consensus are “very great values and hence not easily overridden”, which is another way of saying that whatever else we affirm from our comprehensive doctrine, as reasonable and rational people, we ought to affirm also political values. Second, from the definition we know that those values are “congruent with, or supportive of, or else not in conflict with” (169) the values of the reasonable comprehensive doctrines represented in the society.

Rawls (146–147) thinks that someone might object to the idea of an overlapping consensus as a mere *modus vivendi* to which different parties give their consent since it is public knowledge that all of the parties stand to lose from not giving their consent, but their support is contingent on the current power relations and would be withdrawn, given favorable circumstances. The reply to this worry states that overlapping consensus is a moral conception affirmed on moral grounds; more importantly from the definition we know that each party “support[s] the political conception for its own sake, or on its own merits” (148). The fact that a religious believer, a Kantian liberal and someone lacking a full comprehensive doctrine have their different reasons and reasonings to support the political conception of justice does not make overlapping consensus any less stable (171).

Although overlapping consensus is not a *modus vivendi*, it is very likely that it will grow out of one. Rawls speculates that it is very likely that at first different parties form an agreement just because it is not rational for them not to, given their power relations, although they would break it as soon as it would be beneficial for them; one historical example is the toleration between Catholics and Protestants after the Reformation (158–159). Over time this leads to a constitutional consensus, which is shallower, in the sense that it does not include elements of comprehensive doctrines, and narrower, in the sense

that it covers only political procedures and does not include the whole basic structure of the society. Nevertheless, since the comprehensive doctrines peoples hold are susceptible to influences from the environment, constitutional consensus can develop into overlapping consensus (as discussed in §§ 6–7 of lecture IV of *PL*).

To sum up: the stable society Rawls pursues in *PL* is characterized by three features and from those features and the general facts about the democratic society, we know that the conception of justice has to be political in the sense discussed in section 2.2 and it furthermore has to be the focus of an overlapping consensus, in other words be affirmed by the representatives of all the reasonable doctrines from their own point of view. Once such a consensus is found, the political values it consists in are relied on in discussing questions of justice and constitutional essentials.

2.5 The Idea of Public Reason

In a nutshell, Rawls' proposed idea of public reason is very simple, phrased in the form of a maxim: in (liberal) democratic public discourse, appeal to only those reasons that all participants of public discourse could also endorse. This is not to say that public reason assumes full agreement on all issues, but rather it assumes that there is the possibility of agreement on some of the things and when talking about public issues we should restrict our reason providing to only those things. Since an overlapping consensus is assumed, there is no problem to assume a set of political values which every reasonable person can endorse, regardless of their comprehensive doctrine. The idea of public reason could also be formulated by using the norm of reciprocity, a negative definition of which is provided by Amy Gutmann and Dennis Thompson as follows:

Any claim fails to respect reciprocity if it imposes a requirement on other citizens to adopt one's sectarian way of life as a condition of gaining access to the moral understanding that is essential to judging the validity of one's moral claims. (Gutmann and Thompson 1996: 57)

So the maxim of public reason would then be: when engaged in public discourse, always respect the norm of reciprocity. The idea is that once a political conception of justice, which is the focus of an overlapping consensus of reasonable comprehensive doctrines, is found, it can well-order a society and public reason is the way people are supposed to formulate their political discussions in that society.

There are several specifications that need to be made in order to have a full description of public reason as Rawls conceives it. The first is the question of in what way is it public. Public reason is public in three ways:

- 1) being the reason of citizens as such, i.e. being the reason of the public;
- 2) having as its subject the common good, i.e. the good of the public;

3) its nature and content is publicly given by the principles of justice. (213)

By contrast the opposite to public is not personal reason but nonpublic reason, which means that it is limited to a certain association (church, university); while reasoning might be public within those associations, it is nonpublic in the wider scope, if it takes itself as its basis (220). Public reason is not meant to apply to citizens as a matter of law, but it is meant to be a moral idea of an ideal of citizenship (213). Another point which should be made is that public reason does not apply to all political questions, but only those concerning constitutional essentials and basic justice (214). Furthermore, public reason is not meant to apply to one's personal deliberation, but only to political advocacy done in the public forum, and also to voting on the matters specified, otherwise people would be hypocrites: arguing publicly one thing, but acting in another way (215).

Rawls (215–216; 1997: 767–768) also notes that while public reason is an ideal of democratic citizenship, it applies differently to people depending on their position, meaning more strictly to judges and less strictly to private individuals. As such, The Supreme Court is a good example of public reason in action, as it has to provide justifications of its rulings that have to meet the same criteria as public reason (235).

The content of public reason is given by the conception of justice, which is the focus of an overlapping consensus and thus political in the sense discussed above. It is also assumed to be broadly liberal in character, which means it specifies certain rights and liberties, assigns certain priority to those rights and liberties, and also provides means to make use of those rights and liberties (223). For that political conception to have any practical use for deliberation, it has to include not only substantive principles of justice, but also general guidelines for inquiry (224). To really satisfy the norm of reciprocity, Rawls (224–225) thinks, we must limit our reason providing to common sense and uncontroversial findings of science.

One last issue which needs to be dealt with, before we can look at the arguments for adopting the idea of public reason and the possible problems with it, is the issue of the limits of public reason. In other words: are there exceptions to it? Rawls (247) identifies two possible approaches:

- 1) the exclusive version, where one may offer parts of one's comprehensive doctrine, if they are public, but not the whole doctrine itself;
- 2) the inclusive version, where one may offer parts of one's comprehensive doctrine if it strengthens the idea of public reason.

Since the inclusive view “encourages citizens to honor the ideal of public reason and secures its social conditions in the longer run in a well-ordered society” (248), Rawls thinks the inclusive approach is better. He offers two examples where the introduction of one’s comprehensive doctrine into political deliberation strengthened the idea of public reason: the abolitionists’ arguments against slavery and Martin Luther King’s arguments for civil liberties (249–250). Due to later criticism Rawls (1997: 776) introduces *the proviso*, which

allows us to introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support.

Rawls (1997: 784) admits that there are several questions that need to be answered about the proviso (for example, in what timeframe should public reasons be offered?), but he thinks that those have to be worked out in practice and cannot be decided in advance, and for that it is important that the proviso would be satisfied in good faith. In light of the proviso, Rawls (lii) states that the exception discussed in *PL* (that parts of a comprehensive doctrine can be introduced if it helps to strengthen the idea of public reason) can be dropped, since the proviso adequately covers those kinds of situations.

To sum up: once people have reached an overlapping consensus and used it to get to a political conception of justice to well-order their society, they need some form of reasoning to govern their political deliberation about constitutional essentials and matters of basic justice. That form of reasoning is the idea of public reason which gets its content from the political conception of justice, meaning that it only contains political values and general rules of inquiry. At times exceptions can be made and nonpublic reasons might be used, when people in good faith believe that public reasons are forthcoming.

2.6 Arguments for Public Reason and the Problems with It

Rawls’ main argument for adopting the idea of public reason comes from the principle of liberal legitimacy: the political power of the state is a collective power, which we all share; since it is as much mine as it is yours, its usage ought to be collective. As we saw earlier, since reasonable people can disagree on matters, due to burdens of judgment, it will be very difficult, if not impossible, to decide unanimously on some issues. No group can insist that their views should be carried out by the power of the state because their views are true, because all groups have an equal claim to truth among reasonable doctrines. To use political power to enforce one’s own comprehensive doctrine would just be unreasonable (60–61).

Another side of this argument is not to emphasize the collective nature of political power, but the individual's rights against it. According to the liberal principle of legitimacy, the exercise of the state's power must be such that it is based on matters of constitutional essentials that all citizens might reasonably be expected to accept. Given the fact of pluralism, public reason is the only conceivable way to reach such a situation.

Further, given the facts about the society and the nature of persons as reasonable, we ought to realize that it is practically impossible to engage in our political dealings in any other way than by relying on the idea of public reason (62–63). Instead of searching for the one true conception of justice, we ought to, Rawls (134–135) proposes, accept that in fact that there is no one single answer; after that, the only practically thinkable way to proceed in the spirit of the idea of public reason.

A third reason is that since the political community is a special kind of community (first, people have no prior history before the political community—one enters a political community by birth; and second, it is closed—one exits a political community only by death), people are bound to it in a way that they are not bound to different associations. But if we have not freely chosen to be a part of the political community and we cannot leave it (as we could leave a church or a club, when we find their specific reason unacceptable), the reason employed in that community has to be such that it is acceptable to all (136–137, 222).

A final argument, which is not actually presented by Rawls, although he does touch upon it (1997: 782–783), is that the idea of public reason is the only way to be fair to all. If the idea of public reason is not held up, we can imagine that in a democratic society the majority would use its own comprehensive doctrine to make decisions and would in effect force the minority to accept a different comprehensive doctrine, which would be unfair to the minority. Furthermore, James Sterba (2000: 40–41) has argued that if the majority wanted its decisions to have any legitimation, the principle of majority rule would have to have some moral force, and the minority has to recognize that the majority has a legitimate claim on them since it is the majority. But such an agreement could only be provided in terms of something which is an idea of public reason, since it would have to be accepted by all.

There are several problems which one could raise with the idea of public reason. For one, it does not always yield one answer; in other words, there might be more than one reasonable answer. This is because there are many political values that can be characterized in many ways. Were such a situation to arise, one could claim that public

reason has failed to resolve the issue at hand and the introduction of comprehensive doctrines seems necessary. The solution would be some kind of voting in which all appeal only to political values and decide based on their sincere opinion. (240–241)

Another issue is that it is hard to specify when the question is resolved by public reason; it also seems as if leaves many things unanswered (244). To this Rawls (1997: 799) replies simply that public reason is not always meant to lead to general agreement.

But the biggest problem for the idea of public reason is to answer to the question: why limit the discussion with public reason? Since public reason is only a part of the truth, there is some part of the truth that is left out. Rawls (71) feels that this could be answered in different ways. First of all, the solution lies in the liberal legitimacy idea discussed earlier, that the uses of state power must be such that it could be reasonably expected of all citizens that they would endorse the justification for that usage. Since people are different (the fact of pluralism) this calls for the use of public reason.

The second reason is that the different comprehensive doctrines lead us to an overlapping consensus and that leads us to a conception of justice; thus there is no need for a wider scope than public reason, since everything of importance is already included. Thirdly, Rawls points to the fact that we constantly omit things we know to be true when engaging in serious deliberation, only to be fair in our procedure; for example, there are restrictions on how evidence can be acquired in order for it to be used in court. (216, 218)

To sum up: there are various reasons for adopting the idea of public reason. It is morally and practically demanded by the principle of liberal legitimacy; it is also necessitated by the special nature of the political community and its relation to the individual; and, thirdly, this is the only way in which we can assure fairness given the fact of pluralism. While there might be some internal worries concerning the idea of public reason, for example, it is too restrictive or in some sense impotent, there are good replies to all of those worries.

I think it would be helpful to take a look at what Rawls' position specifically means for religious reasons. Since Rawls (1997:775) does not endorse the secular-religious divide, no religious reason is excluded in virtue of being religious, but only insofar as it is not part of the overlapping consensus of the reasonable doctrines of that society. For example, it is rather safe to assume that all the reasonable doctrines, on various grounds, will be able to endorse a fundamental human right to life or a ultimate value of

human life, which means that in a debate about abortion someone may introduce this kind of religious reason (it would be religious in the sense that it would be based on religious grounds). At the same time, I do not think that we can assume that all the reasonable doctrines will be able to endorse a statement about the beginning of life at conception, which means that in a debate about abortion someone may not introduce that kind of religious reason, which would be, once again, religious in the sense that it is religiously grounded.

2.7 Comparison with Others' Views

For comparison, this last section gives a very short survey of some other authors who generally express the same sentiments as Rawls, although they do not strictly speaking agree with him. One of those authors is Audi, to whom Rawls (1997: 779) also refers by describing his position: "a view often expressed is that while religious reasons and sectarian doctrines should not be invoked to justify legislation in a democratic society, sound secular arguments may be". I am not able to cover the extensive argumentation and background of Audi's position, but I am be able to sum up his main points in the form of principles which he thinks should govern public debate in a liberal democracy. These principles are:

The principle of theo-ethical equilibrium: where religious considerations appropriately bear on matters of public morality or of political choice, religious people have prima facie obligation to seek an equilibrium between those considerations and relevant secular standards of ethics and political responsibility (Audi 2000: 136)

The principle of secular rationale: one has a prima facie obligation not to advocate or support any law or public policy that restricts human conduct, unless one has, and is willing to offer, adequate secular reason for this advocacy or support. (Audi 2000: 86)

The principle of secular motivation: one has a (prima facie) obligation to abstain from advocacy or support of a law or public policy that restricts human conduct, unless in advocating or supporting it on is sufficiently motivated by (normatively) adequate secular reason. (Audi 2000: 96)

The institutional principle of theo-ethical equilibrium: religious institutions have prima facie obligation to seek theo-ethical equilibrium in deciding to advocate or support laws or public policies that restrict human conduct. (Audi 2000: 138)

The principle of ecclesiastical political neutrality: in a free and democratic society, churches committed to being institutional citizens in such a society have a prima facie obligation to abstain from supporting candidates for public office or pressing for laws or public policies that restrict human conduct. (Audi 2000: 42)

From these principles we can see that Audi's approach is basically the same: some reasons are not suitable for usage in the political arena. The major difference lies in the fact that, for Audi, the line between those reasons which are "the right kind" and those which are not is the exact same line as that between secular and religious reasons. If we understand religious reasons in the sense discussed in the previous chapter, we can safely assume that there will be a considerable overlap between reasons which are excluded on Audi's view and those which are excluded on Rawls' view. But Audi's position gets us only a subset of the reasons which are excluded under the idea of public reason, because Rawls' idea of public reason excludes also secular reasons which fall outside the overlapping consensus.

Although the proposal is framed in much more general terms, Bruce Ackerman (1989) represents a position which is quite close to Rawls':

When you and I learn that we disagree about one or another dimension of the moral truth, we should not search for some common value that will trump this disagreement; nor should we try to translate it into some putatively neutral framework; nor should we seek to transcend it by talking about how some unearthly creature might resolve it. We should simply say *nothing at all* about this disagreement and put the moral ideals that divide us off the conversational agenda of the liberal state. (Ackerman 1989: 16)

Trying to generalize about all of the different positions, the Standard View could be summarized in the following way: starting from the premise that all kinds of coercion need to be justified, we determine that one ought to provide reasons which meet a certain standard, namely, being able to justify a given instance of coercion. For various reasons different authors feel that religious reasons are unable to meet that standard (be it because not everybody shares the same religious views, or that religion has no place in politics), and therefore that religious reasons should not be introduced into public debate about coercive laws. Although they do not elaborate on the details of the positions, Christopher Ebrele and Terence Cuneo (2008) list, in addition to the authors already mentioned, Habermas, Charles Larmore, Stephen Macedo and Martha Nussbaum as people who all hold the general position that religious reasons cannot be used to provide justification for coercive laws, while secular reasons can. There are many authors who think that there is something wrong with this view and have criticized it in various ways, and to those objections I now turn.

Chapter 3 — Critique of the Standard View

As one might expect, the Standard View as presented by Rawls for example is the target of numerous criticisms. The current chapter is dedicated to exploring the main lines of critique and discussing some replies to them. It is worth bearing in mind a few things before we proceed: one, that the main lines of criticism which I present are not all meant to apply in that specific form to the Rawlsian approach introduced in the previous chapter, nor are they all targeted at the Rawlsian approach; they are generalizations and thus present only a general picture. Since my ultimate aim is to defend a different version of the Standard View from the one presented in the previous chapter, the replies provided here are offered as replies which could be provided from the Standard View, as presented in the previous chapter. There are some objections with which the Standard View in its current form is unable to deal or deal conclusively. The version of the Standard View I present in the next chapter should be able to overcome those difficulties.

Two, while there are many authors who object to or see problems with the Standard View, this does not necessarily mean that they are not sympathetic to the Standard View; in other words, there are those who are in general in favor of the position presented by the Standard View, but as a matter of intellectual integrity want to scrutinize it, and there are also those who are in general not in favor of the position presented by the Standard View, and seek ways to show its incompetence. Finally, there is one specific theme in the criticisms of the Standard View which I will not get into, and that is the so-called Rawls-Habermas debate (see McCarthy 1994 and Boettcher 2009). This is for several reasons: I do not want to make my treatment too specific—Rawls' role is to be an prominent example of the Standard View, I have no interest in Rawls *per se*—and I do not want to become overly exegetic by focusing my attention on the authors rather than the problems.

Relying on the discussion by James Boettcher and Jonathan Harmon (2009: 9–11) the main lines of criticisms can be divided into six categories.

The first of these takes issue with the conception of political justification which is employed; critics object that the conception is not clear enough, or that it does not warrant the restrictions which are demanded by the proponents of the Standard View.

The second of these finds faults with the feasibility of the Standard View; the critics ask whether there enough reason to think that people, especially layman, are able to reason

and discuss within the restrictions and requirements set by the Standard View, and, if not, whether that casts doubt on the plausibility of the Standard View.

The third of these raises the question of fairness; it seems that if the Standard View were to be adopted, then people with (strong) religious convictions would be burdened considerably more than those who do not have such convictions.

The fourth of these suggests that the Standard View does not allow people with religious convictions to maintain their personal integrity or exercise their preferred way of life according to their religion.

The fifth of these consists in numerous consequentialist arguments which claim that if the Standard View were to be adopted, various bad outcomes would result, from the decline of the social status of churches to a lack of plurality in public debate.

The sixth of these questions whether the restrictions advocated by the Standard View are supported by other liberal moral principles and obligations; furthermore, some have suggested that these restrictions might even be inconsistent with other liberal moral principles and obligations.

3.1 Criticisms of the Concept of Political Justification

As mentioned, the first line of criticism takes issue with the conception of political justification which is being used. There are several different ways in which one could present this kind of objection. I will not be able to cover and reply to all of them, but I will try to provide a response to one specific point which has been raised by many authors and also to discuss a little the issue of the clarity of the criteria.

It seems to many of the critics that the Standard View which asks for a justification provided in terms of public reason, asks not for *a* justification but for *the* justification; in other words, a publicly justified policy must have one public justification which everyone accepts. So, for example, Dacey (2008: 47) writes that the premise that the legitimacy of the state can be guaranteed only by being in principle able to justify the state's actions to those who are subject to them and the conclusion that appeal to private reasons is illegitimate in politics, since not all are able to accept those reasons, does not follow the conclusion that there must be a single reason every citizen accepts. Because the aforementioned principle demands only that there exist some reason that the citizens could accept to justify the state's action, there is no requirement that it be the very same

reason. There need not be a *consensus of reasons*, since a *convergence of reasons* would do.

In other words, someone might argue for the establishment of a new national park because they think that diversity in nature and nature itself has instrumental value for the well-being of humans, and someone else might argue for the establishment of the same new national park because they believe that God made men the stewards of the Earth, and a third person might argue for it on the grounds that they think diversity in nature and nature itself have intrinsic value.

A similar point is made again by Gaus and Kevin Vallier (2009: 58) by quoting D'Agostino (1996: 30):

If both A and B share a reason R that makes a regime reasonable for them, then the justification of the regime is grounded in their *consensus* with respect to R. If A has a reason R_a that makes the regime reasonable for him, and B has a reason R_b that makes the regime reasonable for her, then the justification of the regime is based on *convergence* on it from separate points of view.

The same kind of distinction on the same basis is made by Nagel (1987: 218), although he goes on to argue for a mix of these rather than preferring one over any other.

Gaus and Vallier go on by noting that since reasonable pluralism is taken as a given, it is almost necessary that some, but not every, member of the public will have faith-based reasons. This means that those faith-based reasons cannot count as part of the public reason, as they are not shared by all. But this means that the insistence on consensus is actually hostile to any genuine pluralism: since a consensus assumes relative similarities between people, and in pluralism, which is taken as something that is the case and also should remain to be the case, you do not have such similarities. Thus, we ought to move away from consensus and towards convergence. Although it might be hard to find a convergence of reasons for each possible law if we try to base all of them in the many different comprehensive views the citizens have, there is no necessary reason why we could not succeed in this. Arguments of the same kind have also been raised by Jeffery Stout (2004) and Nicholas Wolterstorff (1997a).

One possible reply to this objection is actually proposed by Gaus and Vallier (2009: 59), namely, that one could take a position similar to Christine Korsgaard, who concludes (1993: 51) that "the only reasons that are possible are the reasons we can share"; in other words, if you do not share my reason, then either you are in error by not sharing it with me, or I am in error in thinking that it is a reason in the first place. But that kind of

metaphysical argument about the nature of reasons is not the path I think that anybody would like to take.

Instead, I think that the most reasonable path would be to offer two other replies: first, to claim that the criticism misfires in the sense that there is no such assumption for a consensus in the Standard View, and, second, the adoption of a search for convergence of reasons instead of a consensus of reasons would do very little if anything in practical terms.

It is very easy to see how the criticism misfires when we offer a quick reconstruction of the Standard View. According to Rawls, the only reasons that can be introduced in public discussion for political justification are those which come from public reason; the content of public reason is determined by the specific political conception of justice which happens to well-order the given society (Rawls 1996: 223). In other words, the reasons one can use have to be reasons which are consistent with or derived from the political conception of justice.

The political conception of justice is itself justified in three steps: first, *pro tanto* justified by political values alone; second, fully justified by each individuals' comprehensive doctrine; and, third, publicly justified when each citizen acknowledges and accepts each other citizens' full justification, thereby forming an overlapping consensus (Rawls 1996: 386–387). In other words, the content of the political conception of justice is determined by all the reasonable doctrines in a given society such that the holder of each doctrine endorses the political conception "from its own point of view". As Rawls puts it:

In this case [the case of overlapping consensus], citizens themselves, within the exercise of their liberty of thought and conscience, and looking to their comprehensive doctrines, view the political conception as derived from, or congruent with, or at least not in conflict with, their other values. (Rawls 1996: 11)

But if public reason determines which reasons are allowed to be used for providing political justification and the content of public reason is determined by the political conception of justice, which is accepted by each individual on the basis of their *own* comprehensive doctrine, then there is no need for a consensus of reasons and convergence would suffice, in the way the critics describe consensus and convergence. In fact, although Rawls refers to this situation as overlapping consensus, I believe that he actually has in mind something more similar to what the critics refer to as convergence. Similar interpretations have been put forth by Lawrence Solum (1993: 761) and Robert B. Talisse (2005: 61).

Let us now look at the second reply. If we look at the example of establishing a new national park that I introduced earlier, we will see that those three people could agree on the matter, despite each having a different reason for supporting the establishment of the national park. We might ask why is that; the answer, it seems to me, is that they managed to agree, just because they were in agreement. The point is that after an agreement over some proposed policy has been reached under normal circumstances, there will be little or no further discussion about the reasons for this agreement. We might want to know what those reasons are, to be aware in what possible situations they might withdraw their support, and we might want them to adopt additional reasons to guarantee stronger support, but we would not want them to give up their previous reasons, i.e. to force a consensus where there is convergence.

The only case where we would want to do this is where the reasons provided are not *bona fide* reasons (e.g. "I support the law L, since the coin flip came up heads"); but anyone who advocates for a convergence rather than a consensus of reasons must admit that religious reasons are *bona fide*, otherwise religious reasons would not have any business converging with other reasons. So it must be the case that religious reasons are in principle as good as non-religious reasons, and if they were offered in support of a law for which also non-religious reasons are offered, all the parties would be satisfied. For I assume it would seem to us very strange if the three people in the example were to go on arguing, saying something like "I do not accept your support for this policy to establish a new national park; since you think God commanded men to guard nature, you have to accept that nature has instrumental value for us."

This means that if A does not see any reason whatsoever to support a proposed law L, in fact she has reason R_1 to oppose it, and B has reason R_2 in support L, it does not matter if we want to achieve consensus or convergence in order to count the law publicly justified, it will fail on both accounts, since there will not be neither a consensus or a convergence in reasons between A and B. But if A had a reason R_3 to support L she would converge in her reasons with B for the support of L, but she might as well be in consensus with B since they are in agreement. In other words, convergence of reasons over a consensus of reasons is workable as a practical solution only if there is substantial agreement on the matter; but if there is substantial agreement over the matter, then the reasons for that agreement lose most of their significance.

Another issue concerning the conception of political justification employed by the Standard View is the issue of clarity. The kinds of reasons one is allowed to offer in support of a law are restricted in the Standard View to "the right kind" of reasons, which

are themselves defined by various criteria. Boettcher and Harmon (2009: 8), for example, list reasonableness, publicity, secularity, accessibility or rational acceptability to others; in other words, for political justification only reasons that are reasonable are allowed, or only reasons that are accessible to all are allowed, and so on. The critics (e.g. Dacey 2008: 48–49 and Weithmann 2002: 177–179) claim that the proponents of the Standard View are unable to provide an adequate interpretation of their criteria, leaving it vague what exactly falls under “the right kind” of reasons and what does not.

It is obvious that the determination of something falling or not falling under a given definition is a matter of judgment and almost always subject to disagreement. Edward Schiappa (2003, chapter 7) discusses a court case where both parties were in agreement that something could be counted as legally obscene when, among other things, the things under consideration “taken as a whole, do not have serious literary, artistic, political or scientific value” (Schiappa 2003: 117), but were in deep disagreement over whether a certain set of seven photographs in fact falls under that definition or not. Rawls (1996: 56–57) finds that such things occur because of burdens of judgment: general states of affairs which are causes of reasonable disagreement, which were discussed in previous chapter.

Taking this into account, we can imagine debates similar to the one mentioned above, but concerning the usage of religious reasons in political justification: all the parties involved have agreed that only reasonable or accessible reasons are allowed, but have not come to an agreement on whether religious reasons are in fact reasonable or accessible. This means that even if a satisfactory level of clarity were achieved on the level of the criteria for “the right kind” of reasons, the problems most likely would not stop. I say most likely because there can be criteria with which it would be hard to argue that religious reasons fall under them, for example, secularity, which is advocated by Audi (2000) who also provides an extensive discussion of what constitutes a religious argument, as we saw in chapter 1.

But does this inevitability of the persistence of the problems somehow relieve the theorists of the obligation to provide a clear criterion? Obviously, no. While practical considerations do have to play role in political philosophy, one should not get tangled up in them and do one’s best to provide at least a theoretically clear and coherent view. So the question for us is: has the Standard View succeed in providing such a criterion which, at least, on paper is clear enough? And, if not, how should it be amended or what changes have to be made to improve the situation?

To evaluate whether the criterion of publicity, accessibility, or in the case of Rawls, reasonableness are in fact theoretically vague, we have to see what the authors have said about these criteria. It seems to me that there is no theoretical vagueness involved in distinguishing the reasonable from the unreasonable, which is the underlying criterion for distinguishing between different people, disagreements and doctrines for Rawls, who defines reasonable people as people, who:

- 1) among equals are ready to propose principles and standards as fair rules of the game and play by them, assuming that others follow suit;
- 2) accept burdens of judgment (what the burdens of judgment are I mentioned a few paragraphs previously). (1996: 54)

To identify, at least theoretically, whether a person meets those two criteria should be fairly straightforward. The same should be the case with reasonable disagreement, since that is understood to be a disagreement between reasonable people caused by the burdens of judgment (Rawls 1996: 55).

The account of reasonable comprehensive doctrines includes three features:

- 1) they are exercises of theoretical reason, meaning that they cover the major religious, philosophical and moral aspects with consistency and coherency;
- 2) they are exercises of practical reason, setting up the hierarchy of the different values and balancing them in real life situations;
- 3) they are usually based on some tradition and are slowly evolving, not popping into existence just like that or changing direction arbitrarily (Rawls 1996: 59).

While Rawls admits, that this account is loose, it is not loose in the sense that it is hard to say what falls under it, but in the sense that many different doctrines fall under it; so the theoretical judgments of what is a reasonable doctrine are actually that much easier.

If one found that unsatisfactory, then on the other side there is a fairly good attempt by Dacey to amend the situation. Although he does not specifically raise the issue of clarity concerning the conception of political justification, he does offer not only one but eight criteria to which a reason which is offered in public discussion should respond. In addition he provides an explanation of the criteria which leaves little room for misinterpretation: *honesty*, in the sense of saying what you really mean; *rationality*, in the procedural belief-desire sense; *consistency*, in the sense that we are willing to take our positions to their logical conclusions; *evidence*, in the sense that the connection of our reasons to the real world matters; *feasibility*, in the sense that what we say is realistic; *legality and morality*, in the sense that we are in accord with our laws and ethics; and *revisability*, in the sense that we are ready to submit our views to criticism (Dacey 2008: 52).

To briefly summarize: the first main line of criticism finds the conception of political justification problematic. There are several problems. first, the demand for one single reason seems unwarranted; to this one could answer that there is in fact no such demand and even if there were, replacing it with a different approach would not change much. Second, some critics feel that the criteria specified are vague or there is trouble identifying “the right kind” of reasons; to this one could reply that there is no such vagueness when it comes to the Rawlsian Standard View and that, to the extent that there is, there are good alternatives.

3.2 The Argument from Feasibility

The second line of criticism of the Standard View puts forth an argument which in its general form could be called the Argument from Feasibility. It has two distinct forms, and I shall discuss both of them and provide replies to one of them here and to the other one in the next chapter. The first of these two makes the point that the requirements of the Standard View are too complicated (especially) for ordinary citizens: they have to be able to make very subtle distinctions between suitable and non-suitable arguments; sometimes they have to be able to set aside some of their own convictions to make sure that their arguments truly are “the right kind”; also they have to be able to weigh different arguments against counter-arguments that have been offered to make judgments about whether sufficient justification has been provided or not. If this is indeed the case—that the realization of the Standard View is not feasible—then the Standard View faces a serious problem; in light of these circumstances, it would not seem plausible anymore. Such arguments have been put forth by Peter de Marneffe (1994), Michael Perry (1997), David Reidy (2000), and to some extent by Eberle and Cuneo (2008).

I think that there are several replies to this worry that one could offer: some of them are meant to show that in fact there is no problem, and the others are meant to show that even if there were some trouble concerning the practical feasibility of the Standard View it would not necessarily be a problem, or at least not a problem of theory-crushing magnitude. While it is true that the requirements of the Standard View are fairly great, there is no principled reason why people could not receive an adequate education during their compulsory education years which would prepare them for this. In fact, Gutmann (1993, 1998, 1999, 2006) has repeatedly argued for a democratic conception of education which would do just that: provide students with the skills and knowledge necessary for being able to argue and reason at the level required by the Standard View. Also, being able to fulfill the obligations set by the Standard View is more important in some places than others; for example, we would expect members of the parliament to be

better at following the rules of the Standard View than the man on the street; but since we already expect more from the former than from the latter, then it would not be unreasonable to expect our members of parliament to be able to comply with the requirements of the Standard View.

Furthermore, if the critics really believed that people are unable to make the necessary distinctions between public and non-public reasons, or to draw the right conclusions, or to judge whether sufficient justification has been provided, then they would also have to admit that any judicial system which relies on juries to make decisions is similarly flawed. If an ordinary citizen is called upon to be a member of a jury in a criminal case, then she is asked to perform tasks which are very similar to the ones she would have to perform under the Standard View when engaging in public reasoning. The usage of the jury system is evidence that there is confidence in ordinary citizens' competence, thus we should not think that they are unable to manage with the Standard View.

And if the low level of general education or just being perceived as not being able to do some task were a serious reasons to reject some political ideas, then I doubt if the democratic form of government would ever have been adopted or the right to vote extended to women and people with all kinds of economic status. But the democratic form of government was adopted and suffrage was extended to women and people with all kinds of economic status; and if lack or low competency was not an issue there, it should be an issue here.

Even if it turned out that the necessary level of education to be adequately able to comply with the Standard View were, for example, at least some undergraduate level philosophy courses, we would still not be in a completely hopeless situation. Henry Sidgwick, for example, famously maintained that utilitarianism is a esoteric theory, meaning that in some circumstances it might be better for us not to learn and behave according to the correct theory and rely on an incorrect theory instead (Dworkin 2006: 640). Moreover he thought that the utilitarian calculation needed for making moral judgments is in many cases too complex to be performed by a layman and thus some simple rules of thumb would suffice for most of us in most situations; in fact they might even be necessary to ensure a general compliance with the moral code (Singer 1972: 237). A similar approach could be taken with the Standard View; if it really turned out to be too complex or too time-consuming to be used with sufficient efficiency by laymen, then we could come up with some fairly simple and general rules which would then be applied by laymen.

The second reply involves simply biting the bullet and acknowledging that the practical implementation of the Standard View is indeed hard and there are some feasibility issues. But who said it has to be easy? Moreover, both Rawls and other authors have said that the approach they are advocating is an *ideal*, to which all should strive; maybe state officials more than regular citizens; and maybe no one might ever even reach it, but this would not be a reason to abandon it all together. Thus Rawls writes:

That public reason should be so understood and honored by citizens is not, of course, a matter of law. As an *ideal* conception of citizenship for a constitutional democratic regime, it presents how things might be, taking people as a just and well-ordered society would encourage them to be. It describes what *is possible and can be, yet may never be*, though no less fundamental for that. (Rawls 1996: 213, my emphasis)

And also:

We need this three-part division because, as I note later, the idea of public reason does not apply in the same way in these three cases and elsewhere. In discussing what I call the wide view of public political culture, we shall see that the idea of public reason *applies more strictly to judges than to others*, but that the requirements of public justification for that reason are always the same. (Rawls 1997: 767–768, my emphasis)

Audi is in agreement on the ideal conditions:

Naturally, a fully conscientious effort to find a comprehensible and adequate reason may fail. If this is so, *the failure is excusable*, though it is a further question whether the agent is excusable for acting on a reason that is not comprehensible or not adequate. (Audi 2000: 158, my emphasis)

And on the difference of constraints depending on your status:

[T]he public discourse of *ordinary citizens is generally less constrained* as to appropriate religious content than that of government officials, and among them the highest constraints tend to be on the judiciary. (Audi 2000: 174, my emphasis)

The third reply is a more general, methodological one, and it questions the weight that is assigned to the practical difficulties presented by the critics. It is obvious that when doing political philosophy, which is a branch of practical philosophy, one cannot disregard the constraints set by reality completely, but at the same time one should not become too engulfed in them either. After all, political philosophy is a normative discipline and as such it aims to make statements about how things *ought to be*; it aims at making the world a different place, most would even say a better place. Such aims can only be achieved when we model the world according to our theory and not the other way around. As John Dewey (2001: 87) noted, one must find the delicate balance between ideals and reality when constructing a concept such as society.

The second kind of Argument from Feasibility presented by Dacey (2008: 49–50) claims that excluding matters of conscience, meaning mainly religion, from public discourse would require us to refrain from debating serious moral issues within public reason. There is no way to single out one matter of conscience, religion, from others, such as

morality, and to exclude one from public debate and not the others. In other words, the Rawlsian public reason approach cuts public discourse too thin, in both the topics that are acceptable and the reasons that can be provided for and against a position, to allow any sort of fruitful discussion at all, due to the vast number of things reasonable people can disagree on, but which also are needed for meaningful discussion.

The same flaw is pointed out by Eberle and Cuneo (2008): since Rawlsian public reason rejects reasons from any comprehensive religious conception of the good as well as any reasons based on secular comprehensive conceptions of the good (such as Aristotelianism or utilitarianism), this approach is simply unsustainable. Public reason as Rawls conceives it does not seem to contain enough for people to have meaningful and fruitful discussions about the constitutional essentials, let alone about more mundane laws and issues.

Here I think that proponents of the Standard View have to concede the critics' point, at least when applied to the Rawlsian version of the Standard View. But instead of seeing this as a reason to reject the Standard View, I rather see it as a reason to revise it, as have others. The revision offered by most is simply to extend the set of "the right kind" of reasons to include all kinds of secular reasons, thus providing public debate with sufficient material to discuss serious moral matters and constitutional essentials (see Eberle and Cuneo 2008). Although my proposal is also an extension, in principle, it has a different basis than the secular-religious divide, but more on that in the next chapter.

3.3 The Argument from Fairness

The third line of criticism leveled at the Standard View raises a question about the fairness of the Standard View; the critics argue that even if the Standard View were feasible with all its requirements, obligations and restrictions, it would disproportionately burden religious citizens compared to non-religious citizens. This is because, as Cristina Lafont (2009: 130) has put it, religious people would have to "have at their disposal two parallel pools of reason to draw from". The reasons religious people would normally use to back-up their positions are not acceptable under the Standard View, which means that they have to make the extra effort to come up with reasons which they can use to support their views in providing political justification. They cannot, as it were, assume, as non-religious people often can, that their reasons are "the right kind" of reasons (see Neal 2000, Greene 2004). A further point of the Fairness argument is that while in some versions of the Standard View, like the Rawlsian public reason approach presented here, religious reasons are not singled out as the only kind of reasons which are not "the right

kind” the fact is that religious reasons are most the obvious ones and are noticed more easily (see Wolterstorff 1997a).

Another version of the argument, put forth by Alessandro Ferrara (2009), tries to show that the development and change of what is acceptable or what is the norm is much more rapid in non-religious contexts, therefore the congruence, which existed 400 or 300 years ago, of what is not allowed under civil and religious law alike has almost ceased to exist, and it would be unfair to demand from the religious to pick up the pace.

The first reply that could be provided from the position of the Standard View, especially from the Rawlsian version of it, is to say that this objection misfires. Rawls (1996: 149) quite explicitly states that he assumes that citizens have divided their overall views into two; the political and everything else, and use only their political views when engaged in political debate. Similar replies could be given from all positions which exclude some of the views people have, because in all such cases it is assumed that everybody has to set aside some part of their views when engaged in political debate. But if that should prove unsatisfactory, then there are also other replies possible.

The claim of fairness which is exemplified by the demand for equal treatment rests on the idea that exceptions in treatment should only be made in cases where there are relevant differences between people: while men differ from women by sex, this is not considered to be a relevant difference when deciding the salary of a person since no one can choose their sex;¹¹ therefore it is a common practice to consider paying unequal salaries to men and women for the same job to be unfair; in the same situation, the number of years person has worked at a company could be considered a relevant difference. If it could be shown that accepting a religious belief in general or accepting a certain religious belief is a simple matter of choice, based on some objective reasons, then it could be argued that having a religion or a religion which employs reasons which are not of “the right kind” is a relevant difference when it comes to providing political justification, since they could choose not to be religious or to be of another religion.

If someone were to make a claim for an unfair number of votes based on aristocratic convictions about putting the number of votes a person has into proportion with how much wealth and/or education that person has, we probably would not take her too seriously, since there are adequate arguments for not holding such beliefs in a liberal democratic state. Analogously, then, we need not take the unfairness claims of religious

¹¹ While various medical procedures allow one to change one's physical appearance, biological make-up, i.e. whether that person has XY or XX chromosome pair, remains unchanged.

persons too seriously. The obvious problem with this reply is that I do not think that it would be very easy to show that religion is such a thing that could be just chosen on the basis of objective reasons; at least, most of the liberal democracies of today do not seem to think that this can be shown, as we can find the prohibition of discrimination based on religion from their legislation (§14 of European Convention on Human Rights; §12 of The Constitution of the Republic of Estonia).

A slightly better reply would be to say that the requirements, obligations and restrictions set by the Standard View on the people who are engaged in offering political justification are no more unfair than the fact that the official language of Estonia is Estonian is unfair to all the tourists and immigrants who have to acquire some of the language or make do otherwise. As I will try to argue in the next chapter, the rules of the game are set by a certain set of principles and if one does not find the rules acceptable one need not play the game. Since the next line of criticisms raised against the Standard View is similar, the reply is also similar, so I will develop this idea further there.

3.4 The Argument from Integrity

This argument against the Standard View is closely related to the previous two and, as before, I will not cover all of the possible versions of it, but I will try to give a comprehensive picture of the different versions of the argument. According to Boettcher and Harmon (2009: 10), this is the most well-known line of criticism and its most well-known proponent is Wolterstorff (1997a, 1997b). A version of this argument has been presented by numerous other authors, including Nancy Rosenblum (2000), Mark Jensen (2005), Dacey (2008), Eberle and Cuneo (2008) and Lafont (2009); some questions related to this argument are discussed by John Garvey (1993).

The argument, as presented by Dacey (2008: 48), claims that the Standard View would seriously hinder the religious liberty of some citizens. The religious freedom of liberal states ought to mean that the citizens are free to practice or not to practice their religion; but if the practice of a religion demands from them that they would oppose laws that contradict the teachings of their religion, and at the same time they are restricted in voicing their concern, then their religious liberty is being unjustifiably coerced. Freedom of conscience is empty without the possibility to act upon one's conscience.

Another version by Eberle and Cuneo (2008) points to the fact that there are citizens of liberal states (they mention specifically one quite well-known example, Sayyid Qutb¹²) who do not even find the fundamentals of the liberal state, such as the robust religious freedom, acceptable. Thus the Standard View does not only restrict the religious freedom of some citizens by excluding religion from public discourse; its very existence is such that it hinders the religious freedom of some citizens; since they are unable to organize their life according to their religious creed, they are forced to give up the integrity of their religious identity.

The version that Lafont (2009: 128–129) offers contrasts the Standard View's demand for reasonably acceptable justification and the reasonable pluralism in which that justification is to be provided. If there is a need for general assent to any coercive policy on the basis of reasons everyone can reasonably share, and there is a considerable pluralism in the society, one can hardly expect such an agreement to come about easily; that is, of course, since we are also committed to not dismantling the plurality of opinions by brutal exclusion—so the challenge is to explain how agreement can be reached in such circumstances. This would not be a problem, according to Lafont, if people taking part in the discussion took “their own cognitive stance” from which to proceed with the arguments and counter-arguments about the matter at hand; but due to the prevailing pluralism, these cognitive stances are bound to be so different as not to meet the requirements of shareability. In other words, in order to try to comply with the demand presented by the criterion of legitimacy some citizens are forced to break it.

While I see the problem which is put forth and I recognize that for some people with deep religious convictions this might be a serious issue, as would, I assume, the proponents of the Standard View, I do not think that this is a reason to change or even give up the Standard View. I am going to offer three versions of the same kind of reply to this objection, and if not all three, then I hope that at least one example should be convincing enough to see why I do not think this objection poses any serious difficulty to the Standard View.

First, consider Anna, who happened to take part in an open workshop about debating when she was in high school. It seemed interesting to her, so the next day she decided to enlist in the local debate club. As it happened, she turned out to have all the necessary talents required to be a good debater and with the training and practice from her local

¹² Supposedly he laid the intellectual foundation of Al Qaeda, the New York Times called him the Karl Marx of Islam fundamentalist (see Paul Berman “The philosopher of Islamic terror” 23.03.2003 *The New York Times Magazine* URL = <http://www.nytimes.com/2003/03/23/magazine/the-philosopher-of-islamic-terror.html> [accessed: 16.03.2010] and Robert Irwin “Is this the man who inspired Bin Laden?” 01.11.2001 *The Guardian* URL = <http://www.guardian.co.uk/world/2001/nov/01/afghanistan.terrorism3> [accessed: 16.03.2010]).

club, she soon became known as the best debater in her town, leading numerous teams to many victories. When she graduated from high school and went to university, she already knew that there was no debating club in her institution but she also knew many of the people she had met at various tournaments were students there; so she decided to form a debating club which would be affiliated with the university. Since she did not entangle herself with only the bureaucracy of the club but also continued to take active part in debates, her skills improved and by the time she graduated from university she was arguably the best debater in her country as well as being a very active member in the national society of debating. One could easily say that being a debater or debating was a large part of her identity. But since she was from an Eastern European country, the format of debating she had been practicing was the Popper format, so one could say more specifically that being a Popperian debater was an integral part of her identity.

But despite the fact that being a Popperian debater constitutes an integral part of her identity, if Anna were to go to England to do her graduate work and then discover that all the academic debating clubs and tournaments are using the British Parliamentary style, no one would take her claims to be allowed to use the Popper format debating seriously. The rules of the game are different in that environment and although her favored format is a valid and recognized way of academic debate, the format used in England is different and she either has to give up debating or comply with the new set of rules. Granted, both options demand her to give up the integrity of her identity as a debater, although one in another sense than the other (not engaging in the activity vs. engaging in the activity in a different manner), but this would not be a reason for any of the academic debate clubs to allow her to use the Popperian format in their tournaments.

Second, consider general religious freedom, that is, the general right to exercise one's religious practices and beliefs that is guaranteed by the basic commitments of any properly liberal state to its citizens. While it is very high up on any hierarchy of values and it is granted to everybody, it is neither absolute nor universal. It is not absolute since there are some values that are sometimes preferred to it; for example, in France the principles of *laïcité* trump the right of free exercise of religion, i.e. to wear conspicuous religious symbols (such as Muslim headscarf, Sikh turbans, Jewish skullcap and large Christian crucifixes) in public schools;¹³ or in Switzerland the principles of democratic referenda trump the right of free exercise of religion, e.g., the November 2009 referendum decision to amend to constitution to ban the erection of minarets.¹⁴

¹³ "French scarf ban comes into force", 02.09.2004 *BBC News* URL = <http://news.bbc.co.uk/2/hi/europe/3619988.stm> [accessed: 16.03.2010].

¹⁴ "Switzerland Defends Ban on Mosque Minarets", 30.11.2009 *Fox News* URL = <http://www.foxnews.com/story/0,2933,577668,00.html> [accessed: 16.03.2010]

It is not universal since there is a general assumption that only religious practices which are not harmful to others are to be allowed and tolerated; for example numerous governments have passed legislation about prohibiting cults¹⁵ or taken a position expressing their concern about the existence of cults;¹⁶ also as a matter of common sense any religion which included human or even animal sacrifices or similar practices would not be tolerated nor allowed under the right of free exercise of religion in any liberal democracy.

This means that the right of religious freedom with these qualifications equally demands some people to give up a part of their religious integrity and although specific applications of those qualifications might be controversial and even suspicious, the underlying principle of the existence of those qualifications is not. And if we are willing to restrict such a basic practice (at least more basic than that of providing political justification—there is a element of volition involved in participating in politics) as exercise of religion which has such a wide arena (at least more wide than that of providing political justification—exercise of one's religion affects directly all spheres or life, while providing political justification only one), then I see no principled problem with restricting a less basic right in a narrower arena. Just as the liberal state has some principles or competing values upon which it restricts free exercise of religion, liberal politics could have some principles or competing values upon which it restricts the practice of providing political justification.

Third, consider racism. While there might be those who are willing to make the argument that the Standard View demands that they give up the “strive for wholeness, integrity, integration in their lives” (to use paraphrase a quote from Wolterstorff 1997a: 105) according to the racist principles they have, I doubt that there is anybody who is willing to take that argument seriously. While earlier I made the point that there are differences between religions and ideologies, these differences do not imply that they should automatically be treated differently when it comes to providing public justification; moreover the Standard View as it is presented here does not single out religious reasons as “not the right kind” just because they are religious; it says that those reasons are “not the right kind” due to some other criteria. If the argument from Integrity can be made from one perspective of reasons which are excluded, it should be allowed to be made from other perspectives. I doubt that any of the critics mentioned here are willing to accept the conclusion that racists are also entitled to their integrity and should thus be

¹⁵ Paul Webster “France to crack down on sects”, 14.06.2000 *The Guardian* URL = <http://www.guardian.co.uk/world/2000/jun/14/paulwebster> [accessed: 16.03.2010]

¹⁶ European Parliament *Resolution on cults in Europe*, March 1997 URL = http://www.europarl.europa.eu/workingpapers/cito/w10/annex1_en.htm [accessed: 16.03.2010]

allowed to provide political justification from their worldview. But if one kind of integrity argument has no weight, then none should have.

3.5 The Argument from Bad Consequences

The fifth line of criticism of the Standard View offers various types of outcome related calculations which are supposed to show that if the Standard View were adopted some consequences, which are not only bad but also the kind we should not be willing to tolerate, would follow. As before, I am not able to discuss and reply to all the possible versions, and take up only two. The first of these proposes that since we value unfettered dialogue and are also committed to pluralism of opinions, restricting the usage of religious reasons would deprive us of something valuable, either in the sense that our discussion would not be as rich and diverse as it could be or in the sense that there is something to religious reasons themselves that we should want them to be used in discussions. For example, Lucas Swaine (2009) has argued that the whole debate about the relationship between politics and religion is misconceived, and should be recast in the terms of autonomous and heteronomous reasons. Further, we should include both kinds of reasons in our public debates (even though there is a strong classical liberal commitment to autonomy); this would have several benefits including being able to deal with non-religious but still problematic reasons and to tie in existing liberal arguments concerning autonomy. But since he thinks that religious reasons are a subset of heteronomous reasons, he is in effect arguing for the inclusion of religious reasons in public discussion, because not doing that would rob us of certain benefits. Similar arguments have been put forth by Jeremy Waldron (1993), Phillip Quinn (1995), John A. Coleman (2001), James Bohman (2003), Perry (2003) and Stout (2004).

The second version of the Bad Consequences argument claims that the practice of the Standard View would lead to a situation where the role and the importance of the churches would diminish, and hence their potentiality to positively contribute to the society would also wane. The list of things to which churches and other religious organizations can and do contribute, according to Boettcher and Harmon (2009: 10), includes: representation of marginalized populations, tracking of legislation, providing needed information, cultivating participatory skills and confidence. David Hollenbach (1993: 887, 899) adds "the strengthening of other communities of solidarity in civil society" and the general ability to illuminate the conversation about understanding of the human good between policy and law on one side and the larger society and culture on the other. Since all of the things mentioned are valuable to us, the lack of the churches' capacity to provide or help in providing them would be an unwanted consequence.

The first reply to this objection would be to offer some of the arguments for the Standard View which mirror the objection. In other words, similar arguments from bad consequences could be constructed to show that not adopting the Standard View would lead us into situations where we would not want to end up. One such argument, although slightly outdated, would be the Argument from Religious Warfare which, inspired by the religious wars of the 16th and 17th century, basically says that if religion is included in politics, it is not unreasonable to think that people will start using their political power to further their religious agenda which in turn would lead to persecution, religious conflict and quite possibly war. Audi has very neatly written that "if religious considerations are not appropriately balanced with secular ones in matters of coercion, there is a special problem: a clash of Gods vying for social control. Such uncompromising absolutes easily lead to destruction and death" (Audi 2000: 103).

Another, more contemporary, version of this reply, as discussed briefly by Kent Greenawalt (1993) and in more detail by Eberle and Cuneo (2008), would be to say that introducing religious reasons into politics can be detrimental to democracy and social cohesion. For example, if the only rationale for a given coercive policy were religious and those who do not happen to share that particular religious doctrine but are nevertheless affected by that policy felt serious discontent, for them this would be sign of the failure of democracy. Granted, such discontent is based on the assumption that those religious reasons which one does not share are somehow less acceptable than non-religious ones, but as I discussed earlier, it is a common assumption that religion is something that can not be just chosen at will by considering various arguments and thus we should not expect those discontented with the situation to eventually change their minds. Disappointment with democracy could also arise when religious reasons are assigned equal formal standing with "the right kind" of reasons by institutions, but they are not assigned the equal substantial standing by citizens who actually instantiate those institutions. In other words, religious reasons might be heard but not taken into account. In such a situation, people offering religious reasons would most likely be very indignant: they were asked nicely to come and play with others, but only to be beaten up by them.

If these two arguments have any merit, it seems we have to choose between two sets of bad consequences: either to have slightly less diverse public discussion and not so much contribution to the society from churches and other religious organizations, or to be in a constant state of conflict and witness the slow decay of democracy. Faced with those two options, I do not think that anyone could seriously even consider this as a choice.

For the second reply one could raise doubts about the purported bad consequences. It does not seem to me to be obvious that the premise—the exclusion of religious reasons from politics—warrants the conclusion—the diminished role of churches in society. Many of the contributions mentioned are not even related to politics. It does not seem very plausible that if someone who would otherwise offer religious reasons for political justification is prohibited from doing so would, for that reason, stop being religious or going to church. Moreover, since the Standard View does not aim to regulate the private lives and any other social sphere other than the political, the affect of it on the work of churches and other religious organizations should be minimal. Another issue is of course the existence of the positive influence of churches in the first place; it is not blatantly obvious that religious organizations have the role and importance that is ascribed to them in Estonia for example. It could very well be that in many societies the positive contribution of churches and other religious organizations is so marginal that there is barely anything to diminish.

Even if it were conclusively shown that bad consequences follow from restricting religious reasons in politics, and that they are greater than those from not restricting, the question would still remain: can the contributions churches and other religious organizations make be made only by them? Is there something special about the nature of churches which allows only them to provide representation to marginalized groups or offer additional view-points on matters of value debates? If the same good functions could be performed by some non-religious NGO, then why should we cling on to churches? The only functions which could be special in the way that they could only be performed by a religious organization seem to be those of a spiritual nature, but secular philosophy or even science could very well offer people the consolation and council they seek from religion. Just as monasteries in Europe used to have the functions which are now performed by schools and public libraries, any number of current or future non-religious NGOs or other organizations could perform the good functions churches perform according to the critics.

3.6 The Argument from Consistency

The last of the main lines of criticism of the Standard View demands that the proponents of it to demonstrate that their position, more specifically the restraint obligation they are arguing for, is compatible with other liberal commitments. If such a connection cannot be shown, we would have good grounds for rejecting the Standard View, since our general commitment to liberalism seems to be taken for granted by most of us. Moreover, some critics maintain that the Standard View might also be inconsistent with our other commitments, meaning that there is not only a lack of support but presence of reasons

to reject the Standard View. The authors who have put forth such arguments include Paul Weithman (2000), Eberle (2001) and Micah Lott (2006).

Although Perry (2009) does not suggest something in exactly the same terms, he could also be considered to be making an argument that falls under this category. In a recent article, he examines the question of the relationship of religion as a basis for law making and the US constitution. His conclusion is that in some cases there is no constitutional reason why religious reasons could not be used as a basis for law making, since there are some religious premises that the government might endorse despite the Establishment Clause. For purposes of the individual government official, there should be no constitutional restrictions for supporting laws on a religious basis, since there would be enormous practical difficulties involved in enforcing such restrictions as well as possibilities of paradoxical situations where the same exact law is constitutional in one state and unconstitutional in another.

I think that Perry is mistaken in his argument, since he not only fails to take into account polytheistic and non-theistic religions when considering whether a religious premise violates "the central meaning" of the Establishment Clause, but he also overestimates the neutrality of some of the non-centrally violating religious premises viewed from the position of non-believers. While the addition of "under God" to the Pledge of Allegiance or to the national motto might not favor any Christian denomination over Judaism or Islam, it certainly disregards Hinduism or Buddhism and many similar religions, since in those talk of God in the singular does not make any sense; but more problematically, such endorsements of religion by the government favor religion as such over non-religion, which arguably is prohibited under the Establishment clause. But for current purposes it has little significance, since Perry is making a considerably weaker claim than the other critics, talking only about a specific constitution and not general moral principles associated with liberalism and not saying that restricting would be in contradiction, but that not restricting would not be in contradiction.

As with some other criticisms, I am unable to provide a good reply right now, but I do believe that the argument presented in the next chapter will be able to provide a good reply to this objection. What I will say right now is that: to put it very simply, I think that this kind of criticism misfires because the premises from which the proponents of the Standard View start their argumentation are precisely those kind of liberal commitments the critics are talking about.

In many of the sections I mentioned that there are other versions of the particular criticism, but I was able neither to discuss them nor to provide a reply to them. There are also various points raised against the Standard View which cannot be neatly classified under these six categories mentioned here. Therefore, I have no illusions about the extent to which I have proved that the Standard View can reply to all of the critics. Also, concerning some objections, it seemed to me that the proponents had to concede the critics' point and agree that there ought to be revisions made to the Standard View. In the next chapter, however, I will present a version of the Standard View which I believe has the required revisions, is immune to some of the objections discussed here, and is also able to provide adequate replies to others.

Chapter 4 — The Argument from Toleration

This chapter contains the main argument of the thesis, an argument that defends a version of the Standard View, which stays true to original premises and sentiments and concludes that if religious reasons are to be excluded from political justification it is not on the basis that they are not public, accessible or reasonable, but on the basis of toleration. Since this argument will proceed from toleration, I will start by exploring a little the notion of toleration itself and its place in the liberal tradition. I will follow this with the argument itself and finish by pointing out what the specific advantages of this kind of approach are over the Standard View in light of the criticisms introduced in the previous chapter.

4.1 The Historical and Conceptual Background of Toleration

It might be considered almost a platitude that toleration in its different forms, but first and foremost religious toleration, is an integral part of liberalism. So Joshua Cohen (2009: 6, my emphasis), for example, has written that “[l]iberalism has always been, inter alia, a political outlook, defined by an emphasis on personal freedom, *religious tolerance*, open inquiry, the rule of law, social mobility, and, in its modern formulations, democratic politics”. This toleration seems to be grounded on the commitment to religious freedom, which also as a matter of platitude could be thought of as an integral part of liberalism, thus Larry Alexander (1993: 764, my emphasis) writes that “the characteristic policies of liberalism” include “*substantial freedom of speech and religion*, personal privacy, a relatively free market, democratic political structures, and official endorsement of equality of moral worth”, and Greenawalt (1993: 672–673, my emphasis) has added that the fundamental principles, recognition of which is required for a government to count as liberal, include “notions that citizens are essentially equal, they should have opportunities for political participation, and *they should enjoy liberty of speech and religious exercise*”. Moreover Susan Mendus (1989: 3) has noted that, although arguments for toleration sometimes pre-date liberalism, it has a “privileged status in liberal tradition” and that it is considered by many to be necessary for the promotion of liberty.

Before I go on to the specifics of toleration within the liberal tradition I would like to discuss some conceptual aspects: first, to make sure that I avoid some common misconceptions; and, second, to better make my point about the grounds for toleration. According to Mendus (1989: 8–9), in order for us to properly speak about toleration, three conditions have to be satisfied: first, there has to be a situation of diversity, which is a rather obvious point. Toleration would be impossible if everybody were alike in all

respects, since then there would not be anything to tolerate. Second, the diversity has to be such as to give rise to dislike, disrespect, disgust or the like. This is one of the main points that is usually missed: that toleration implies disapproval and not approval (as in the case of respect, for example). If one makes a statement that they tolerate somebody, they are in effect saying "I do not like what they are doing/thinking, but I am willing to let them be." The third condition is that the tolerator has to be in a position to influence the tolerated. Without this condition, talk of toleration does not make sense, since without any power (be it legal or social) on the part of the tolerator to make a difference in the lives of the tolerated, the tolerated would not be able to tell the difference between toleration and intolerance. Leiter (forthcoming) has argued for a similar conception of toleration, though he incorporates only the latter two aspects of the concept proposed by Mendus.

The reason why toleration is most often taken to mean religious toleration seems to be that the arguments for toleration in contemporary world have their roots in the religious diversity of the 16th and 17th centuries which was marked by numerous and wide scale religious confrontations leading to many domestic and international conflicts. It has been cleverly remarked that the initial plea for religious toleration which came from the minority groups was made just because they were the minority; had they found themselves in a position of power, they would have acted exactly in the same way as their current persecutors (Gough 1991: 57). Only later did the idea of toleration become universal. One of the major figures in laying the foundation for these arguments was Locke, who, interestingly enough, was not advocating so much for toleration as against intolerance, and not so much based on moral but rather pragmatic arguments.

Locke's (1991: 18) first argument is that the civil government is limited in its powers: it is not the business of the state to concern itself with the spiritual well-being of its citizens in the first place. Also, the power of salvation or the care of one's own soul is vested only in oneself and no one else; therefore, no individual could give this power away by contract (just like no one can submit themselves to slavery). The second argument is what could be called the Argument from Futility. The gist of the argument is that, according to Locke (1991: 18), genuine religious belief, which is the purported aim of religious intolerance, cannot be brought about by the external means which the state has at its command. If a person cannot be commanded to truly believe in something or commanded to stop truly believing in something, then religious intolerance is not reasonable, since it fails to succeed in its aims. Thirdly, Locke (1991: 19) presents what could be called the Argument from Theology, which basically claims that even if the previous two arguments could be dealt with and the state managed to convert the whole

population to one religion, this would still not guarantee the salvation of all the souls, since there is no real way of telling if that is the true religion.

It is important to note that Locke obviously does not think that any of these arguments constitute reasons for maximum or universal toleration. The limits of toleration for opinions and actions are set on one side by those opinions and actions which are not harmful or destructive to the society (since the aim of the civil society is the protection of the liberty, life and property of individuals); Locke distinguishes between singular opinions and actions which could be harmful (2006: 276) and opinions and actions which are part of a larger doctrine (2006: 284–285), and neither should be tolerated. On the other side, the limits of toleration are set by the fact of whether the party to be tolerated is itself willing to tolerate others; Locke (2006: 290) considers a religious sect which does not recognize other sects' right to their free exercise, and finds that it would be unreasonable to grant freedom of exercise to that sect.

What is characteristic of these arguments, as I already noted, is that they are pragmatic arguments against intolerance, rather than moral arguments for toleration. Locke seems to be interested more in convincing the would-be persecutors of the irrationality of their actions rather than the harm that is inflicted the victims. We can only speculate on what the real reason for this kind of approach was, but it does seem to correlate with one very great realization which is the child of Enlightenment: that people who have very strong and dear convictions about matters of great importance realize that they are not unique, that others have similar convictions, which might differ in their substance, but have the same kind of status and value for their holders. Since the concept of toleration includes the power to affect the condition of the tolerated, one just has to imagine them in a situation where their convictions are not tolerated and they are made to change those convictions to see what kind of effect intolerance has on other people. The knowledge of how it would feel not to be tolerated and the desire not to find oneself in such a situation becomes the reason to tolerate; you tolerate others in order to be tolerated by others.

Even if one presents a general argument for toleration and it is convincing enough to get people to start tolerating, one is not out of the woods yet. That is because the practice of toleration, as it is presented here, will lead to some paradoxical situations, and so anyone constructing a theory of toleration or a theory of which toleration is a part needs to show why these paradoxes do not arise, or how to solve them if they do arise.

Specifically, I would like to discuss two paradoxes I am not claiming that this is exhaustive, but the first is a fairly obvious one given the concept of toleration employed

here, and the second paves the way to my main argument. As was mentioned above, toleration includes an aspect of dislike or disrespect or a judgment of that sort; this means that whatever one decides to tolerate, one has a certain attitude towards that something and this attitude implies moral condemnation. But if it is the case that one disapproves of the opinion or practice that is being tolerated, and one attaches negative moral value to it, then the question arises as to how one can justify toleration at all? If the opinion or practice is immoral, then how can it be right to allow it?

A solution to this problem is actually fairly easy: one just needs to show that while toleration is a good thing, there are other values which trump it. This means that if the aforementioned paradox does arise, one can consult with some trumping value and see what the right course of action is. For example, Mill thought that autonomy, in the sense that people make their own choices, is one such value. Thus Mill (1978: 65) writes "It really is of importance, not only what men do, but also what manners of men they are that do it." So while it might be that someone chooses to live in a way which is immoral according to our conception of the good life, the paradox does not arise since our reason to tolerate them comes from the fact that their choices were made autonomously, which trumps consideration of toleration.

If we now accept Mill's solution and consider autonomy as a trumping value over toleration then this would also help us to explain situations where we want to decline toleration. If it turned out, for example, that the actions or opinions of the people under consideration are not autonomous, we would have a reason not to tolerate them, since they are not in accordance with our trumping value, and the paradox does not arise.

The second kind of paradox concerns the practice of toleration in another sense; here the main question is how are we to tolerate those who do not tolerate us? If we accept the conception of toleration presented here and also adopt some trumping value to deal with the first kind of paradox, then there will certainly arise situations where some people have opinions or engage in actions which we disapprove of and condemn morally, but since those opinions or actions are explained by the trumping value, we should tolerate them. But if a part of their opinions or actions is such that do not tolerate us, we find ourselves in a problematic situation, since the question arises: what will happen in the future? This is what we could also call the paradox of liberalism: if we hold autonomy to make one's own choices to be intrinsically and not only instrumentally valuable, then we must allow people to reach erroneous conclusions; but if those conclusions happen to be illiberal and the illiberals gain the majority, they might end up overturning liberal rules (Alexander 1993: 796). The solution to this problem is presented in the next section.

4.2 The Argument from Toleration

The question left open at the end of the previous section was how to deal with a situation of having to tolerate those who do not tolerate others. One way out of this problem would be to pursue a similar course of action as with the first paradox: find some other value which trumps toleration and make decisions based on that or just extend the reach of the same value used before. So, for example, one could argue that those who are not willing to tolerate others do not deserve to be tolerated themselves; they lack a basic measure of respect for others and therefore have not earned the right to be tolerated. The problem with this kind of approach is that it would lead us to a vicious cycle of intolerance, because by not tolerating those who do not tolerate because they are not willing to tolerate others, we would have committed the same mistake and therefore have given justification for their non-toleration, since we ourselves are now unwilling to tolerate others and thus do not deserve to be tolerated.

An example would probably help to make things clearer. Let us suppose that Robert believes that as long as all parties are non-coerced and above the age of consent, all sexual practices should be allowed, except those which pose a serious risk of physical harm, because he believes that people have natural freedom to make their own choices except when serious physical harm is involved. Let us also suppose that Mark believes that all non-heterosexual acts are abominations because that is the word of God. Now let us assume that both, Robert and Mark, are acquainted with each other's views and are both in the proper conditions of toleration (i.e., they disapprove of each others views and are in a position to affect each others behavior). If Robert considered whether to tolerate Mark or not and concluded that since Mark is not willing to tolerate him, Mark has not earned the toleration from him, then this would now provide Mark with a justification for withholding his toleration towards Robert, since the very same argument would apply here: if Robert is unwilling to tolerate Mark, then Mark has no reason to tolerate Robert.

It could be that someone can come up with some similar argument which employs a different value as a basis and as such does not run into problems like this. But I cannot think of any for the present and I think that my second solution to this problem is much better anyway.

If one is faced with the question of whether to tolerate those who are not willing to tolerate them in return, then *the answer must be not to tolerate*, since toleration of those who are not willing to tolerate back is pragmatically irrational. Since the conception of toleration employed here states that proper conditions of toleration must include the possibility to influence others' behavior, it follows that those who are not willing to

tolerate you have that power. But if they disapprove of your opinions or actions and have the power to make some changes and they are not willing to tolerate you, the inevitable outcome has to be that they will make you change your opinions or actions.

So, for example, after a *coup d'état*, the new ruling regime is faced with the choice of whether to tolerate the remains of the old regime knowing, that they will not be tolerated in return. They nevertheless decide to try to be civil and let them operate freely with no restrictions, but as the people from the old regime do not tolerate the new one, they decide to do something about it. Slowly but steadily, through various means, they succeed in convincing the right amount of the general population and the right parts of the institutions of the state of their views, thus gathering sufficient support for their own *coup*. If they happen to be successful, then the old regime is restored and the new regime ceases to exist. Of course, it might happen to be that the old regime was much more just or just better in some way, and it is actually very good for the population at large and neighboring countries that the old regime was restored, but from the viewpoint of the new regime, this outcome is not desirable.

In other words, if the conditions of toleration apply—there is diversity, this diversity gives rise to disapproval, and some are in a position to influence others—and there is a choice between tolerating or not tolerating those who are not willing to tolerate in return, the choice is not actually a very meaningful one, since it is a choice between sustaining or giving up your kind of opinions or way of life. To put it very bluntly: one cannot play nice with those who are not willing to play nice back.

This seems to suggest that any successful situation of diversity and therefore toleration can only come about if there is some underlying unity to that diversity. What is required is a sort of meta-level agreement which provides a common foundation to the disagreement which is manifested in the world. As we saw, that meta-level agreement has to allow and tolerate differences in opinions, otherwise there would be a possibility of intolerant parties which would in turn give rise to the possibility to the problems discussed earlier.

One way to reach such a meta-level agreement, an agreement to disagree, is liberal. That is: everybody accepts, on the meta-level, that people are entitled to differing conceptions of the good; people should be able to make autonomous choices between such differing conceptions of the good; and other such very general liberal principles. Rawls (1997: 774) lists three very specific features: first, certain basic rights, liberties, and opportunities; second, special priority of those rights, liberties, and opportunities;

and, third, means to make use of those rights, liberties, and opportunities. When it comes to the substantive level they adopt whatever (comprehensive) doctrine they see fit, provided that it is consistent with the meta-level principles.

As a matter of empirical fact, something like this seems almost to be the case in the current world. Not only governments but most individuals in the West are committed to a certain set of liberal values, while still disagreeing on numerous more specific issues. This means we have some general principles which tell us what kind of political rule is a legitimate one and also what is the proper way to conduct oneself when faced with differing opinions. In order for us to be able to continue to exist in such a manner, we have no other choice than to exclude all such doctrines from our political life which are not a part of the broad family of liberal conceptions, as Rawls (1996: xlvii) uses the term. If we did not, then the second kind paradox of toleration would arise and open up the possibility of illiberal doctrines overturning liberal ones. A similar suggestion is made by Solum (1993: 746–747), that we have good reasons to construct public reason on the principle of excluding nonpublic reasons, and one good way to understand nonpublic reasons is understanding them as reasons which deny certain liberal principles such as the freedom and equality of fellow citizens; this is in effect saying that nonpublic reasons are reasons which are unwilling to tolerate general liberal principles.

A few specifications are in order. First, to avoid getting into vicious circles such as the ones described at the beginning of the section, where the intolerance of one party provided justification for the intolerance of the other party, which in turn provided justification for the first and so on, the question of willingness to tolerate in return has to be asked in a special way. One way would be to ask how one party would react if they were made to tolerate the other party by some external authority; if the doctrines both parties hold are in principle compatible, then that should be reflected in their reaction and we can determine their willingness for mutual toleration without the actual empirical question about their willingness for mutual toleration. Another way would be to use hypothetical reasoning, which would address the question of mutual toleration aside from specific empirical decisions (e.g. “What if they were willing to tolerate you...”).

The second, and perhaps even more important, specification is about reasons. Not only do we have to know who is willing to tolerate us, in order to determine who to tolerate ourselves, but we also have to enquire about the reasons for their toleration; in other words, the question of stability plays a pivotal role. If one party’s toleration of another party is grounded on the wrong reasons, then that is no real indication of actual willingness to tolerate each other. So, for example, while both parties are in the

conditions of toleration, one of them realizes that currently their position of influence over the other party is weaker and thus it would be pragmatically rational for them to tolerate. If that were the case, the mutual toleration would be based on contingent empirical facts about the power relations between the two parties and not on their actual doctrines. Scott Hershovitz (2000: 222) has noted that during the Cold War there was considerable stability in the relationship between the United States and the Soviet Union, but that was not due to ideological reasons, but due to practical reasons: neither was in a position to challenge the other. The agreement of mutual toleration cannot be a mere *modus vivendi*, but it has to be a *moral agreement springing from the beliefs of the parties involved*.

Another reason to ask for the reasons is that it might be that one party has ignored the first specification and thus already made up their mind not to tolerate on empirical and not theoretical grounds. If the other party is unaware of this fact, and thinks that the first party has made their decision based on theoretical reasons, then they might conclude that they also have theoretical grounds for not tolerating. But if the two parties would just sit down and talk with each other they would see that they both have inadequate reasons for their intolerance.

Many authors, for example Solum (1993), Alexander (1993), seem to think that whatever principles we come up for the construction of public reason, those principles themselves would have to be reason of "the right kind"; the idea of public reason must be justified by public reason. It is a matter of debate whether this is a good approach in the first place, but if we assume that it is, then my proposal here would pass the test, almost by definition. The criterion for inclusion in public reason is being consistent with general liberal principles and that criterion itself is consistent with broad liberal principles. But I believe that the pragmatic reasons for accepting such criteria for "the right kind" of reasons are much stronger. Both Maimon Schwarzschild (1993) and Rawls (1997: 804) have argued that the initial thrust during the Enlightenment which led to the discussions of public reason and the proposal of excluding religion from it came from the fact that religion was at the time the strongest illiberal force and thus the biggest threat to liberalism. Schwarzschild goes on to argue that the biggest illiberal threat in today's world comes not from religions but from certain secular doctrines; but the point here is that it is the contention of the whole public reason debate to protect our political culture from illiberal forces, and that is just what my proposed criterion is doing.

I am also in an agreement with authors, such as Swaine (2009), who claim that an approach to the public reason question which does not depend on the secular-religious

dichotomy has at least two advantages over those that do depend on such a dichotomy. First, it allows consideration of reasons provided from secular but nevertheless problematic doctrines, and second, it allows religion to get rid of its role as this red herring it has assumed in the discussion about public reason.

A further reason for accepting this kind of approach to the question of public reason lies in the order in which we accept certain principles. Order here is not meant to imply some strict temporal ordering, although there is an element of that, but rather a value ordering of which principles take precedence over which. The idea is that people have some broad commitments at first, such as the liberal ones mentioned before; then they build their comprehensive doctrines on those commitments, or at least try to use them as the basis for their doctrines, as is also suggested by Macedo (1990: 285). After that the question arises as to how we are to organize public debate, given that people have their respective doctrines which are based on some more general commitments, which may or may not be liberal. We know from the previous discussion that the only way those who happen to hold doctrines based on liberal commitments can reliably sustain their position is if they do not tolerate those who are unwilling to tolerate them in return, due to their own commitments. Also, as a matter of empirical fact, liberalism leaves the individual large room to determine their own comprehensive doctrine, but the basic liberal commitments dictate that illiberal doctrines are "strictly ruled out", to use an expression from Macedo (1990: 285). It seems that the exclusion of illiberal doctrines is a necessary step for any liberal anyway (see also Rawls 1997: 782–783); if that is the case, then there is good reason to adopt it as a basis for organizing public debate.

The next obvious question is, if we were to adopt this approach to public reasoning, what would then happen to religious reasons? The first and most obvious thing that can be said is that it is clear that no religious reason would be automatically excluded just in virtue of being religious; and that all specific reasons, or at least sets of similar religious reasons, or reasons stemming from specific religious doctrines, would have to be surveyed individually to determine their status.

Since I, unfortunately, do not have enough space to go into detailed accounts of different religious reasons or doctrines from which religious reasons are provided, it seems I have to limit myself to an uninteresting claim that religious reasons would be excluded insofar as they are unable or unwilling to tolerate basic liberal commitments. But I will nevertheless try, at the risk of being slightly polemical, to say something more.

For a start, we could go back to Rawls. As we saw, he did not say anything specific about religious reasons either. If the religious reason happened to be in the overlapping consensus, it was part of the content of public reason, and if not, then it would not be allowed to be used (at least not without the later addition of a public reason). But since the overlapping consensus is an overlapping consensus of reasonable doctrines, held by reasonable people, we can infer that it is likely that doctrines held by unreasonable people will not be a part of it.

It seems to me that in many cases religious people would not qualify as reasonable, since they do not accept burdens of judgment and, to a lesser extent, are not willing to meet the norm of reciprocity. If that is the case, then the doctrines held by many religious people would not be included in the overlapping consensus and therefore would be excluded from the content of public reason. So on a Rawlsian picture, it is more likely that religious reasons are excluded than not.

A similar kind of reasoning applied to the position proposed by me would lead to the same conclusion. If the Argument from Toleration is accepted, then the only reasons that can be introduced into public reasoning are those which are, to use an expression from Waldron (1987: 146), "in a certain 'liberal' spirit". Furthermore, the requirement of toleration would mean that any doctrine which purports to be the one and only true view and which has certain expansive ambitions¹⁷ would be excluded. From those two points, it is certain that any fundamentalist religious reasons would be excluded and arguably also Catholic and Islamic reasons (Rawls 1996: xxv; Sicker 2000: 4).

Let us now briefly discuss one more specific example: the issue of gay rights. It has been noted by numerous authors that while most issues could be and usually are solved by using secular reasons alone, the topic of gay rights is an exception (e.g. Perry 2009: 114–115, Gaus and Vallier 2009: 61–62, Ferrara 2009: 88–89). In a debate about the legal recognition of same-sex marriages, any reason which is given against this idea and which is given on the basis that same-sex couples violate some divine command, is intolerant of the lifestyle of gays. If we assume (which I think we safely can) that toleration of the gay lifestyle is the conclusion of our affirmation of broad liberal commitments, then religious reasons which are not tolerant of that are excluded from public reasoning under the position put forth here.

¹⁷ This is meant here in the sense of having the ambition to convert as many people as possible to the given religion, rather than having the ambition of expanding the tenets of the given religion to include new ideas.

4.3 Upshots of the Argument from Toleration

In chapter 2, I described the Standard View in the following way: starting from the premise that all kinds of coercion need to be justified, we determine that one ought to provide reasons which meet a certain standard, namely, being able to justify a given instance of coercion. For various reasons, different authors feel that religious reasons are unable to meet that standard (be it because not everybody shares the same religious views, or that religion has no place in politics), and therefore that religious reasons should not be introduced into public debate about coercive laws.

Broadly speaking, I hold a similar position. The difference lies in the criterion which is used to set down the limits of “the right kind” of reasons. Rawls’ criterion looked to whether the reason is part of the overlapping consensus, i.e. is it shared by all; to the extent that religious reasons are not part of the overlapping consensus they are excluded. But as we saw in chapter 2, we can conceive of religious reasons shared by all reasonable doctrines.

Audi’s criterion looked to whether the reason is religious or not; although Audi does not strictly speaking exclude religious reasons, he does not assign them equal weight to secular ones. And for that reason, I believe that his position is more susceptible to the objections raised in the previous chapter.

The criterion I propose is: to what extent is the reason provided and the doctrine from which it is provided willing to tolerate the broad liberal commitments which underlie any liberal state. This means that religious reasons are excluded insofar as they or the doctrines from which they are offered are not willing to tolerate the liberal commitments underpinning any liberal state.

The reason I feel this approach is superior to the Standard View is that it holds the same basic premise—that the exercise of political power is legitimate only if it is justified by “the right kind” of reasons for all those involved—and draws a similar kind of conclusion—given the diversity of doctrines people hold, “the right kind” of reasons has to be restricted somehow—and at the same time if is able to provide all the replies that the Standard View can provide (as discussed in the previous chapter) to the possible objections, but is at the same time actually immune to some of the objections.

The proposed approach to public reason is able to deal with both the points discussed in section 3.1. The criticisms of the concept of political justification. Just as there is no real insistence on consensus of reasons in the Standard View, all that matters is that the

reasons provided are from such doctrines that are consistent with the broad liberal commitments described earlier. This means in most cases that people will be able to take "their own cognitive stance" in debates, and since the liberal commitments are broad enough to allow for a range of specific comprehensive doctrines, we can talk about convergence of reasons instead of consensus of reasons.

While I have to admit that at first glance it might seem that since the status of reasons as "the right kind" is a matter of judgment, it is thus not an uncontroversial issue; but at least the criterion provided here is theoretically clear enough to satisfy any criticisms discussed earlier. But if we take a closer look we should see that whenever the status as "the right kind" of any reason is up for debate, we would be asking for the basis or the origins of that reason. So for example if reason R_1 is provided for some proposed law L , then "Where does reason R_1 come from? What is the basis for giving it in support of law L ?" would be a legitimate question. The chances are that such enquiry into the source and nature of reasons would lead us either to further singular reasons R_2 – R_n or to some (comprehensive) doctrine D_1 . Having reached those, it is fairly plausible that those reasons R_2 – R_n or that doctrine D_1 directly affirm or deny some of the broad liberal commitments which are at the basis of the proposed criterion. If a position explicitly affirms or denies some principles, the judgment about the affirmation or denial of those principles is a fairly simple thing, even when we take the burdens of judgment into account.

When it comes to the issue of feasibility in the sense that people might not be able to actually act according to the rules proposed here, then in principle my approach is not different from the Standard View presented in chapter 2. The only considerable change is the criterion by which reasons of "the right kind" are identified. So it cannot be any harder than the standard approach, from which there are several replies that can be offered to this kind of objection: democratic education, the kind alluded to earlier, surely will help people to identify doctrines which affirm broadly liberal commitments and those which do not. Also, coming up with rough rules of thumb should not be difficult for the proposed approach either, as there is only a fairly short and simple list of principles the doctrine from which rules are put forth must affirm. Furthermore, since in the proposed approach the set of "the right kind" of reasons is larger than in the Standard View, there is much less possibility for error.

Although it does not strictly follow from the argument, it is my position that the only reply to the criticism that the Rawlsian approach is too restrictive, since it limits the use of public reason to very few topics, that could be offered from the Standard View is to

concede the point and extend the ideal of public reason to apply also in other contexts. Solum (1993: 737–739) has distinguished four contexts—private deliberation and discussion; public discussion about ethics and culture; public discussion about the coercive use of state power; and deliberation and discussion by officials acting in their official capacity—and argued that any ideal of public reason should not apply to the first and should apply to the last. There is also a strong case to be made for it to apply to the third and not limit to just constitutional essentials, because most citizens encounter the state’s coercive power in other areas than constitutional essentials, and if the aim of public reason is to provide political justification, it should do that in areas where citizens ask for it.

As for the problem of the small range of reasons, it is my position that we should just extend the set of “the right kind” of reasons. As I noted earlier, many authors seem to think that the secular-religious divide is an appropriate solution. The position taken here suggests that the line be drawn in another way, but still in a broader way than in the Standard View, since it would not rule out reasons from such comprehensive doctrines as utilitarianism, for example.

One version of the Argument from Bad Consequences claimed that any kind of restrictions would rob us of unfettered public debate. The reply which I can provide, in addition to the ones mentioned before, is that if the reasons that are considered to be “the right kind” are filtered out by the broad liberal commitments upon which the politics of our states is founded, then the question is: do the reasons which get left out have anything valuable to add to the pool of reasons at all? We might value freedom of speech, but that does not mean there is license to say whatever one wants, wherever one wants. However much we value freedom to express oneself, there are still some expressions which we consider worthless or even harmful.

As I said at the end of the last chapter, the Argument from Consistency misfires in the case of the position defended here. There is a strong pragmatic case on the side of liberals not to tolerate those who are not in broad agreement with liberal commitments. From this it follows that there is no inconsistency in enforcing a similar approach when it comes to political justification. Also, the reasons that do get included in the set of “the right kind” of reasons are based on broad liberal commitments and thus by definition cannot be inconsistent with any other liberal commitment.

If we accept the rationale for adopting the proposed approach to public reasoning, then we will see that many of the objections raised against the Standard View do not apply

here. Why is that exactly? If the construction and or justification of various comprehensive doctrines works in the manner described earlier—that all have some basic commitments and build their doctrine upon it, and while there is considerable leeway, all illiberal doctrines are ruled out—then it follows that the doctrines people actually hold are or at least ought to be broadly liberal. And if that is the case, then there is no substantive counter-argument based on feasibility, since if people are reasoning according to the doctrines they should be, they are already employing reasons which are of “the right kind”. Of course, the Argument from Feasibility can still maintain that many people are just bad at reasoning, but that is an issue I addressed already in the previous chapter and the competency issue would arise with any kind of approach to public reason, since at least some regulation is necessary, as I tried to show when I was discussing the metaphor of the market of ideas in section 1.1.

The Argument from Fairness would also lose most of its power, since people would anyway have to provide reasons which are consistent with the basic liberal commitments. Everybody would be equal since everybody has to comply with the rules and the rules are not set by any specific party which is biased, but by what everybody in a liberal democracy believes. The basic point, which has been made in different forms by Ackerman (1989: 20), Rawls (1996: 218), and Audi (2000: 140), is that each social role one might have or context where one might find oneself prescribes the things which are suitable to say or the way things ought to be said, but that does not mean that what is being left out is not true, or not worth anything; it just does not belong to those particular circumstances. In the same way as in criminal court case, there are certain procedures for how evidence may be gathered, or as in a political philosophy seminar, one ought to (in most cases) refrain from talking about calculus, the people participating in the politics of a liberal democracy have to abide by some rules.

The same goes for the Argument from Integrity: although liberal democracy allows for all sorts of things, it does not grant people license to do whatever they want or think of. And although liberal democracy is willing to tolerate all sorts of things, it does not tolerate everything. So people would have to comply with a certain set of rules for public reasoning anyway, which means that the integrity of their identity would not be on the line, or it would be on the line as much as it would be with any other approach to public reasoning which is employed in a liberal state.

To sum up, I would like to reiterate the three main points. First, to adopt the organization of public reasoning in a liberal state on the principle that only such reasons that are compatible with broad liberal commitments are to be allowed is necessary to

stay true to our liberal commitments and to preserve our liberal way of life. Second, since this proposed way of organizing our public reasoning is in principle similar to the Standard View discussed in chapter two, it is susceptible to many of the same criticisms, but as I have shown that there are good replies to all of them. Third, the real benefit over the Standard View here is that some criticisms do not apply and that the proposed approach is more inclusive.

Conclusion

This work started by describing a practice, the practice of lawmaking, in its various forms and posing a question about that practice. If providing justification is an inherent part of lawmaking and we use reasons to provide justification, then the natural question is what kind of reasons? I posed a more specific question: what role can religious reasons play in providing justification in the process of lawmaking?

Before I could engage in answering this question, some background had to be filled in. First there is the crucial premise that any kind of justification is needed at all and that is a premise for which one cannot provide an independent justification. While it follows rather directly from the liberal commitment to individual autonomy, that commitment is either accepted or not. The second premise, that there is a fundamental distinction between reasons which are of "the right kind" and those which are not, has a different standing. As I noted in the first chapter, there are authors who think that all kinds of reasons ought to be allowed and the market of ideas should be free to work out the good reasons from the bad. I do not agree, since we can identify reasons which either are not good or are bad, in other words, are worthy of exclusion.

Due to the pluralism of religious and non-religious doctrines which is present in modern liberal democracies and to the principle of state-church separation, one might be inclined to initially consider religious reasons as not being of "the right kind". But even if that were the case, religious reasons would only be excluded from public discussion, in the sense of the discussion being about public matters and done in public. In other situations, people should be free to rely on almost any reasons they see fit.

Two further specifications have to be made before one can start tackling the specified question. First, what exactly is this public discussion; how is it defined? Partly relying on Jürgen Habermas, I see the public sphere as the arena of public rational-critical debate about political (public) issues; this arena exists only if certain conditions are met, such as the freedom to convene and express one's opinions. Second, what exactly are these religious reasons or arguments which I am inquiring about? Partly relying on Robert Audi, I see reasons/arguments as religious if they meet at least one of the following two conditions: their content makes a substantive religious claim or their inferential power comes from religious sources. I rejected Audi's other two criteria since they would make the analysis and regulation of the public sphere very problematic and messy.

Next I surveyed one possible solution to the question; this solution comes from John Rawls. According to Rawls, only reasons that can be introduced in public discussion for

political justification are those which come from public reason; the content of public reason is determined by the specific political conception of justice which happens to well-order the given society. In other words, the reasons one can use have to be reasons which are consistent with or derived from the political conception of justice.

The political conception of justice is itself justified by an overlapping consensus of the different reasonable doctrines that people in the given society affirm. In other words, the content of the political conception of justice is determined by all the reasonable doctrines in a given society, such that the holder of each doctrine can endorse the political conception "from its own point of view". In a latter addition, Rawls included the proviso that nonpublic reasons can be introduced if one in good faith believes that public reasons can be and are provided in due course. Although Rawls says nothing about religious reasons specifically, since the line for the reasons of "the right kind" is not drawn with the secular-religious dichotomy, one can reasonably assume that many religious reasons would fall outside of the overlapping consensus and therefore the content of public reason.

But there are authors, for example Audi, who argue that "the right kind" of reasons are secular reasons and religious reasons need to be supplemented with secular ones, or that they may not be introduced at all. This kind of approach to the question of providing justification could be called the Standard View. While fairly popular, and to many intuitively very plausible and attractive, there are many objections to the Standard View.

The main lines of criticism could be divided into six categories. The first of these takes issue with the conception of political justification which is employed; critics object that the conception is not clear enough, or that it makes assumptions for singularity of reasons over plurality. To this, one could reply that the objection misfires since there is no such assumption and the conception is usually, at least theoretically, fairly clear or inclusive.

The second line of criticisms finds fault with the feasibility of the Standard View; the critics ask if there is enough reason to think that people, especially layman, are able to reason and discuss within the restrictions and requirements set up by the Standard View; and, if not, that casts doubt on the plausibility of the Standard View. To one version of this argument one could reply that similar restrictions are applied elsewhere successfully and this should not be a problem proper education could not solve. To the other version of this argument, I think there is no good reply from the Standard View.

The third line of criticism raises the question of fairness; it seems that if the Standard View were adopted, then people with (strong) religious convictions would be burdened considerably more than those who do not have such convictions. To this, one could reply once again that similar restrictions are applied elsewhere without the problem of fairness; furthermore, the rules come with the game and they cannot be made to suit all.

The fourth line of criticism suggests that the Standard View does not allow people with religious convictions to maintain their personal integrity or to exercise their preferred way of life according to their religion. To this, the reply from the Standard View would be fairly similar to the previous reply, namely, that questions of integrity seem to arise in other cases too, but there we do not see them as problematic; furthermore, the restrictions of the Standard view are just necessities.

The fifth line of criticism consists in numerous consequentialist arguments which claim that if the Standard View were adopted, various bad outcomes would result, from the decline of social status of churches to a lack of plurality in public debate. To this, one can also offer consequentialist arguments of even worse outcomes if the Standard View is not adopted, or remedy the adoption outcomes by other means than the rejection of the Standard View.

The final line of criticism questions whether the restrictions advocated by the Standard View are supported by other liberal moral principles and obligations; furthermore, some have suggested that those restrictions might even be inconsistent with other liberal moral principles and obligations. Since the proponents of the Standard View start from liberal premises, it is hard to see how this objection has any real merit.

In the light of these criticisms, one could ask: is there a version of the Standard View which were immune to these objections and which does not need to concede some of the critics' points? I believe that there is. The solution comes from abandoning the secular-religious dichotomy as the measure for reasons of "the right kind", for that would allow us to deal also with other reasons which seem, at least intuitively, problematic to us.

The basic idea I present is this: there are certain things we are committed to which are broadly liberal in character, for example, the political autonomy of the individual, to which I referred earlier. To ensure the durability of those commitments, we need to make sure that those who are not tolerant of our liberal commitments are not allowed to act. Because, if they were, they would use their power to change our state into an illiberal state.

Therefore, the only kinds of reasons which can be introduced into public discussion for providing justification are reasons which are tolerant of broad liberal commitments or which are derived from doctrines which are.

The upshot of this kind of approach is that, while retaining the same premises and a similar conclusion, many of the current objections to the Standard View do not apply, or apply in a weaker form. Firstly, the range is much wider; under the Rawlsian approach, only matters of basic justice and constitutional essentials were to be discussed by using public reason. Secondly, by concentrating only on the secular-religious dichotomy, the Standard View is not able to deal with secular but still problematic and illiberal reasons and doctrines. Furthermore, I tried to show that the objections based on fairness and integrity do not apply to this position in the same way.

As the reader may notice, this position is similar to Rawls' in the sense that it does not say anything specific about religious reasons. In principle, religious reasons could be used to provide public justification; whether specific religious reasons should be allowed depends on their ability and willingness to tolerate the liberal commitments which underpin our democracies.

While nothing definitive can be said about all religious reasons, based on a very superficial and short analysis I concluded that the end result would likely be the same as with Rawls' approach: that most religious reasons would be excluded.

Bibliography

- Ackerman, B. (1989).** Why dialogue?, *The Journal of Philosophy* **86**: 5–22.
- Alexander, L. (1993).** Liberalism, religion, and the unity of epistemology, *San Diego Law Review* **30**: 763–797.
- Alston, W. (1964).** *Philosophy of Language*, Prentice-Hall, Inc.
- Audi, R. (1989).** The separation of church and state and the obligations of citizenship, *Philosophy and Public Affairs* **18**: 259–296.
- Audi, R. (2000).** *Religious Commitment and Secular Reason*, Cambridge University Press.
- Boettcher, J. W. (2009).** Habermas, religion and the ethics of citizenship, *Philosophy & Social Criticism* **35**: 215–238.
- Boettcher, J. W. and Harmon, J. (2009).** Introduction: Religion and the public sphere, *Philosophy & Social Criticism* **35**: 5–22.
- Bohman, J. (2003).** Deliberative toleration, *Political Theory* **31**: 757–779.
- Cohen, J. (2009).** Truth and public reason, *Philosophy & Public Affairs* **37**: 2–42.
- Coleman, J. A. (2001).** Public reason and religion in public, *Wake Forest Law Review* **36**: 279–304.
- Constant, B. (1988).** The liberty of the ancients compared to with that of the moderns, in Benjamin Constant, Biancamaria Fontana (ed.) *Political Writings*, Cambridge University Press, pp. 309–328.
- Dacey, A. (2008).** *The Secular Conscience: Why Belief Belongs in Public Life*, Prometheus.
- D'Agostino, F. (1996).** *Free Public Reason: Making it Up as We Go*, Oxford University Press.
- D'Agostino, F. and Gaus, G. (1998).** Introduction: Public reason why, what and can (and should) it be?, in F. D'Agostino and G. Gaus (eds.) *Public Reason*, Ashgate, pp. xi–xxiii.
- de Marneffe, P. (1994).** Rawls's idea of public reason, *Pacific Philosophical Quarterly* **75**: 232–50.
- Dewey, J. (2001).** *Democracy and Education*, Pennsylvania State University.
- Dworkin, G. (2006).** Theory, practice, and moral reasoning, in D. Copp (ed.) *The Oxford Handbook of Ethical Theory*, Oxford University Press, pp. 624–644.
- Eberle, C. (2001).** What respect requires: And what it does not, *Wake Forest Law Review* **36**: 305–352.
- Eberle, C. and Cuneo, T. (2008).** Religion and political theory, in E. N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy* (Winter 2008 Edition). URL = <http://plato.stanford.edu/archives/win2008/entries/religion-politics/>
- Eurobarometer (2005).** *Social Values, Science and Technology*. URL = http://ec.europa.eu/public_opinion/archives/ebs/ebs_225_report_en.pdf (accessed 21.11.2009)
- Ferrara, A. (2009).** The separation of religion and politics in a post-secular society, *Philosophy & Social Criticism* **35**: 77–91.
- Friedman, M. (2000).** John Rawls and the political coercion of unreasonable people, in V. Davion and C. Wolf (eds.) *The Idea of a Political Liberalism: Essays on Rawls*, Rowman & Littlefield, pp. 16–33.

- Garvey, J. H. (1993).** The Pope's submarine, *San Diego Law Review* **30**: 849–876.
- Gaus, G. and Vallier, K. (2009).** The roles of religious conviction in a publicly justified polity: The implications of convergence, asymmetry and political institutions. *Philosophy & Social Criticism* **35**:51–76.
- Glanville, J., C. Kelly, R. Sharp (2009).** *Free Speech Is Not For Sale: The Impact of English Libel Law on Freedom of Expression*, English PEN and Index on Censorship. URL = <http://www.libelreform.org/our-report> (accessed 21.11.2009)
- Goodin, R. (2009).** The state of the discipline, the discipline of the state, in Robert Goodin (ed.) *The Oxford Handbook of Political Science*, Oxford University Press, pp. 3–57.
- Gough, J. (1991).** The development of Locke's belief in toleration, in J. Horton and S. Mendus (eds.) *A Letter Concerning Toleration in Focus*, Routledge, pp. 57–77.
- Greenawalt, K. (1993).** Grounds for political judgment: The status of personal experience and the autonomy of generality of principles of restraint, *San Diego Law Review* **30**: 647–675.
- Greene, A. (2004).** Constitutional reductionism, Rawls, and the religion clauses, *Fordham Law Review* **72**: 2089–2103.
- Gutmann, A. (1993).** Democracy and democratic education, *Studies in Philosophy and Education*, **12**: 1–9.
- Gutmann, A. (1998).** Undemocratic education, in P. H. Hirst and P. White (eds.) *Philosophy of Education: Major Themes in the Analytic Tradition*, Vol. 3, Routledge, pp. 28–43.
- Gutmann, A. (1999).** *Democratic Education*, Princeton University Press.
- Gutmann, A. (2006).** The authority and responsibility to educate, in R. Curren (ed.) *A Companion to the Philosophy of Education*, Blackwell, pp. 397–411.
- Gutmann, A. and Thompson, D. (1996).** *Democracy and Disagreement*. Belknap Press of Harvard University Press.
- Habermas, J. (1974).** The public sphere: An encyclopedia article (1964), *New German Critique* **3**: 49–55.
- Habermas, J. (1991).** *The Structural Changes of the Public Sphere*, MIT Press.
- Habermas, J. (2006).** Religion in the public sphere, *European Journal of Philosophy*, **14**: 1–25.
- Hershovitz, S. (2000).** A mere modus vivendi?, in V. Davion and C. Wolf (eds.) *The Idea of a Political Liberalism: Essays on Rawls*, Rowman & Littlefield, pp. 221–230.
- Hollenbach, D. (1993).** Contexts of the political role of religion: Civil society and culture, *San Diego Law Review* **30**: 877–901.
- Jensen, M. (2005).** The integralist objection to political liberalism, *Social Theory and Practice* **31**: 157–171.
- Korsgaard, C. (1993).** The reasons we can share: An attack on the distinction between agent-relative and agent-neutral values, *Social Philosophy & Policy*, **10**: 24–51.
- Lafont, C. (2009).** Religion and the public sphere: What are the deliberative obligations of democratic citizenship?, *Philosophy & Social Criticism* **35**: 127–150.
- Leiter, B. (forthcoming).** Foundations of religious liberty: Toleration or respect? University of Chicago, Public Law Working Paper No. 275. URL = <http://ssrn.com/abstract=1474324>
- Locke, J. (1991).** A letter concerning toleration, in J. Horton and S. Mendus (eds.) *A Letter Concerning Toleration in Focus*, Routledge, pp. 12–56.

- Locke, J. (2006).** An essay concerning toleration, in J. R. Milton and P. Milton (eds.) *An Essay Concerning Toleration and Other Writings on Law and Politics, 1667–1683*, Clarendon, pp. 269–302.
- Lott, M (2006).** Restraints on reasons and reasons for restraint: A problem for Rawls' ideal of public reason, *Pacific Philosophical Quarterly* **87**: 75–95.
- Macedo, S. (1990).** The politics of justification, *Political Theory* **18**: 280–304.
- McCarthy, T. (1994).** Kantian constructivism and reconstructivism: Rawls and Habermas in dialogue, *Ethics*, **105**: 44–63.
- Mendus, S. (1989).** *Toleration and the Limits of Liberalism*, MacMillan.
- Mill, J. S. (1978).** *On Liberty*, Hackett Publishing.
- Nagel, T. (1987).** Moral conflict and political legitimacy, *Philosophy & Public Affairs*, **16**: 215–240.
- Nagel, T. (1995).** *Equality and Partiality*, Oxford University Press.
- Nagel, T. (2003).** Rawls and liberalism, in S. Freeman (ed.) *Cambridge Companion to Rawls*, Cambridge University Press, pp. 62–85.
- Neal, P. (2000).** Political liberalism, public reason, and the citizen of faith, in R. P. George and C. Wolfe (eds.) *Natural Law and Public Reason*, Georgetown University Press, pp. 171–98.
- Perry, M. (1997).** *Religion in Politics*, Oxford University Press.
- Perry, M. (2003).** *Under God?*, Cambridge University Press.
- Perry, M. (2009).** Religion as a basis of law-making?: Herein of the non-establishment of religion, *Philosophy & Social Criticism* **35**: 105–126.
- Quinn, P. (1995).** Political liberalisms and their exclusions of the religious, *Proceedings and Addresses of the American Philosophical Association* **69**: 35–56.
- Rawls, J. (1996).** *Political Liberalism*, Columbia University Press.
- Rawls, J. (1997).** The idea of public reason revisited, *The University of Chicago Law Review* **64**: 765–807.
- Reidy, D. (2000).** Rawls's wide view of public reason: Not wide enough, *Res Publica* **6**: 49–72.
- Rosenblum, N. (2000).** Introduction, in N. Rosenblum (ed.) *Obligations of Citizenship and Demands of Faith*, Princeton University Press, pp. 3–31.
- Sicker, M. (2000).** *The Islamic world in ascendancy: From the Arab conquests to the siege of Vienna*, Praeger.
- Schiappa, E. (2003).** *Defining Reality: Definitions and the Politics of Meaning*, Southern Illinois University Press.
- Schwarzschild, M. (1993).** Religion and public debate in a liberal society: Always oil and water or sometimes more like rum and Coca-Cola?, *San Diego Law Review* **30**: 903–915.
- Singer, P. (1972).** Famine, affluence and morality, *Philosophy & Public Affairs*, **1**: 229–243.
- Solum, L. (1993).** Constructing and ideal of public reason, *San Diego Law Review* **30**: 729–762.
- Sparrow, A. (2009).** Richard Dawkins condemns British libel laws, *The Guardian* 20th September. URL = <http://www.guardian.co.uk/science/2009/sep/20/richard-dawkins-libel-laws> (accessed 21.11.2009)

- Sterba, J. (2000).** Rawls and religion, in V. Davion and C. Wolf (eds.) *The Idea of a Political Liberalism: Essays on Rawls*, Rowman & Littlefield, pp. 34–45.
- Stout, J. (2004).** *Democracy and Tradition*, Princeton University Press.
- Swaine, L. (2009).** Deliberate and free: Heteronomy in the public sphere, *Philosophy & Social Criticism* **35**: 183–213.
- Talisie, R. B. (2005).** Liberalism, pluralism, and political justification, *Harvard Review of Philosophy* **13**: 57–72.
- Taylor, C. (2007).** *A Secular Age*, Harvard University Press
- Vucheva, E. (2009).** Estonians least religious in the world, *EUobserver*. URL = <http://euobserver.com/9/27587> (accessed 21.11.2009)
- Waldron, J. (1987).** Theoretical foundations of liberalism, *The Philosophical Quarterly* **37**: 127–150.
- Waldron, J. (1993).** Religious contributions in public deliberation, *San Diego Law Review* **30**: 817–848.
- Warnock, M. (2008).** The politics of religion, *New Statesman* Issue: “Belief is back” 10th April. URL = <http://www.newstatesman.com/politics/2008/04/law-moral-religious-society> (accessed 21.11.2009).
- Weithman, P. (2000).** Citizenship and public reason, in R. P. George and C. Wolfe (eds.) *Natural Law and Public Reason*, Georgetown University Press, pp. 124–70.
- Weithmann, P. (2002).** *Religion and the Obligations of Citizenship*, Cambridge University Press.
- Wolterstorff, N. (1997a).** The role of religion in decision and discussion of political issues, in R. Audi and N. Wolterstorff *Religion in the Public Square*, Rowman & Littlefield Publishers, Inc., pp. 67–120.
- Wolterstorff, N. (1997b).** Why we should reject what liberalism tells us about speaking and acting in public for religious reasons, in P. Weithman (ed.) *Religion and Contemporary Liberalism*, University of Notre Dame Press, pp. 162–81.

Resümee

Religioossed põhjendused avaliku õigustuse alustena?

Käesolev töö eeldab, et kõik (sundivad) seadused peavad olema õigustatud ning mitte kõik põhjendused ei sobi niisuguse avaliku õigustuse pakkumiseks. Sellest lähtuvalt võetakse vaatluse alla küsimus, millist rolli saavad mängida religioossed põhjendused niisuguse avaliku õigustuse pakkumisel.

Esimeses peatükis selgitatakse probleemi pikemalt ning antakse ülevaade olulistest mõistetest ja nende tähendustest. Teises peatükis esitatakse pikem ülevaade John Rawlsi lahendusest sellele küsimusele ning samuti vaadeldakse lühidalt teisi seisukohti. Neile põhinedes antakse standardseisukoha kirjeldus.

Kolmandas peatükis vaadeldakse kuut peamist vastuargumenti standardseisukohale ning pakutakse neile kõigile vastused standardseisukohast vaadatuna. Viimases peatükis esitatakse üks versioon standardseisukohast, mis, põhinedes tolereerimise argumendile, eristab „õiget tüüpi“ põhjused selle alusel, kas need põhjused või doktriinid, millest põhjused tulenevad, on võimelised ja tahtelised tolereerima üldiseid liberaalseid seisukohti.

Töö järeldeb, et kuigi ilma täpsema analüüsita ei ole võimalik midagi öelda kõigi religioossete põhjuste ning nende rolli kohta, on tõenäoline, et religioossed põhjused jäävad „õiget tüüpi“ põhjuste hulgast välja.

Summary

Religious Reasons as a Basis for Political Justification?

This work assumes that all (coercive) laws ought to be justified and that not all reasons are suitable for providing such public justification. Thus it takes into consideration the question of to what extent religious reasons can be used to provide such public justification.

In the first chapter, the problem is elaborated and the relevant terms are explained. In the second chapter, one specific solution from John Rawls is discussed at length and other positions briefly mentioned, from which the description of the Standard View is offered. According to this, religious reasons are not (in most cases) seen as suitable for providing public justification, or are not as good as secular reasons.

In the third chapter, six main lines of criticism of the Standard View are discussed along with possible replies that could be given from the position of the Standard View. In the last chapter, a version of the Standard View is offered, which, based on the Argument from Toleration, draws the line of "the right kind" of reasons based on whether the reasons or the doctrines from which they are provided are able and willing to tolerate broad liberal commitments.

The work concludes that while nothing definitive can be said about all religious reasons and their role in providing public justification without any further analysis, it is probable that many religious reasons should be excluded from the pool of "the right kind" of reasons when it comes to providing public justification.